Rockingham Machine-Lunex Company *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and its Local 2077. Cases 33-CA-4272 and 33-CA-4566

March 19, 1981

DECISION AND ORDER

On September 30, 1980, Administrative Law Judge Thomas D. Johnston issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rockingham Machine-Lunex Company, Pleasant Valley, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] At the hearing, the Administrative Law Judge ruled that the unauthenticated transcripts of the post-strike negotiation meetings were hearsay evidence but admissible for the limited purpose of showing the "essence" of what occurred at those negotiations. In his Decision, however, the Administrative Law Judge relied on the transcripts to establish the truth of the matters asserted in the transcripts. Notwithstanding his misplaced reliance on the transcripts, the record shows that the facts concerning those meetings were established by Respondent's authenticated notes concerning the meetings.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Although we agree with the Administrative Law Judge that Respondent bargained in bad faith, thereby violating Sec. 8(a)(5) and (1) of the Act, we do not agree or rely on his finding that such bad faith was evinced by (1) Respondent's failure to vest its negotiator with "sufficient authority to conduct negotiations," inasmuch as the Union was aware of Respondent's negotiatior's tentative authority and negotiated on that basis; (2) Respondent's submission of only 19 proposals in the first 10 sessions (Respondent's conduct here merely was reflective of the bargaining format the parties utilized wherein the parties bargained from the Union's proposed contract); and (3) Respondent's failure to document its statements that financial conditions might cause it to liquidate or close the plant, inasmuch as the Union never requested documentation thereof.

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge: These consolidated cases[1] were heard at Rock Island, Illinois, on November 19, 1979,[2] and on January 22 through 25 and March 11 and 12, 1980, pursuant to a charge filed on May 10 in Case 33-CA-4272 by the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW) (herein referred to as the Union), and a complaint issued in Case 33-CA-4272 on June 28, and pursuant to a charge filed on November 9 in Case 33-CA-4566 by the Union and International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), Local 2077 (herein referred to as the Local), and a complaint issued on December 4.

The complaints, as amended prior to and at the hearing, allege that Rockingham Machine-Lunex Company (herein referred to as Respondent) violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein referred to as the Act), by unlawfully threatening employees that if they engaged in a strike they would be considered to have quit; violated Section 8(a)(3) and (1) of the Act by refusing to pay striking unit employees their vacation benefits; and violated Section 8(a)(5) and (1) of the Act by unlawfully refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of Respondent's employees in the bargaining unit during negotiations by refusing to agree to a union dues-checkoff provision while authorizing checkoff for the United Fund and United States Savings Bonds, offering only minimal concessions to the Union relative to noneconomic matters, offering no concessions to the Union relative to economic matters, insisting on placing a 35-cent cap on an existing cost-of-living allowance, refusing to agree to arbitration as a final step of the grievance procedure provision, rescinding its agreement with the Union to a number of provisions they had previously agreed to and initialed, causing unwarranted and unreasonable delays in scheduling and holding of bargaining meetings, failing to vest its agent Hodges with sufficient authority to enter into binding agreements during negotiations, and by other acts and conduct when considered with the above demonstrating that the totality of Respondent's conduct was such as to show a lack of good faith in bargaining. It is further alleged that a strike engaged in by the employees was an unfair labor practice strike caused and/or prolonged by these unfair labor practices engaged in by Respondent.

Respondent in its answers dated August 31 and December 7, and amended at the hearing, denies having violated the Act. Further, Respondent in its answer in Case 33-CA-4566 raised as affirmative defenses that certain acts alleged were not the subject of the charge and were also barred by Section 10(b) of the Act. Inasmuch as those acts occurring outside the 10(b) period were subsequently deleted from the complaint and the lan-

[1] The order consolidating these cases was issued by me on January 7, 1980.

[2] All dates referred to are in 1979 unless otherwise stated.

guage of the charge, which alleged violations of Section 8(a)(1), (3), and (5) of the Act, was otherwise sufficient to support the remaining allegations of the complaint these affirmative defenses lack merit and are hereby dismissed.

Respondent at the hearing also amended its answer in Case 33-CA-4272 to raise Section 10(b) of the Act as an affirmative defense to paragraph 8(b)9 of the amended complaint which alleges that Respondent failed to vest its agent Hodges with sufficient authority to enter into binding agreements during negotiations. Since negotiations were conducted by Hodges within the 10(b) period such defense is hereby rejected.

The issues involved are: (a) whether Respondent violated Section 8(a)(1), (3), and (5) of the Act as alleged by unlawfully threatening employees for engaging in a strike, refused to pay certain striking employees their vacation benefits, and refused to bargain in good faith with the Union, and (b) whether the strike was an unfair labor practice strike.

Upon the entire record in these cases,[3] from my observations of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent,[4] I hereby make the following:[5]

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Iowa corporation with its office and place of business located at Pleasant Valley, Iowa, is engaged in the business of job contract machining. During the 12-month period preceding June 28, a representative period, Respondent in the course of its operations sold and shipped finished products, valued in excess of $50,000, from its Pleasant Valley, Iowa, facility to points located outside the State of Iowa and it purchased and received at its facility goods and materials valued in excess of $50,000, which were transported there from States located outside the State of Iowa.

Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), and the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), Local 2077, are each labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background and the Bargaining Unit*

Respondent operates a plant located at Pleasant Valley, Iowa, where it is engaged in the business of job contract machining.

Its official and supervisory personnel during the periods in issue included President Richard Schmidt, Secretary-Treasurer and Administrative Manager William Schmidt, General Manager Robert Zeaske, Personnel Director Jean Anderson, Foreman Hill, and Work Superintendent Joe Eisenberg.[6]

President Schmidt has served as president since 1972 and on September 18, 1978, he and his wife acquired sole ownership of Respondent from the estate of the former owner who died in June 1978.

On May 22, 1978, following a Board-conducted election, the Union was certified by the Board as the exclusive representative for the purposes of collective bargaining of Respondent's employees in the following unit:

> All full-time and regular part-time production and maintenance employees including warehouse and shipping employees, truck drivers, janitors and leadman employed at the Employer's Pleasant Valley, Iowa facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The pleadings admit and I find that the unit set forth constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Based on the Union's certification and the presumption arising therefrom that its majority representative status continues,[7] I find contrary to Respondent's denial that the Union has been and is now the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

B. *The Refusal To Bargain in Good Faith and the Strike*

The Union, by letter dated June 12, 1978, from its subregional director, Peter Kuchirka, requested of Respondent available dates to begin negotiations. President Schmidt responded by letter dated June 16, 1978, informing Kuchirka that it was available to begin negotiations and Jim Hodges[8] would be in charge of negotiating for Respondent.

Following an exchange of telephone calls between Kuchirka and Hodges, which were initiated by Kuchirka on June 21, 1978, the first negotiation meeting was held on June 30, 1978. This meeting as were all subsequent negotiation meetings was held at the Clayton House in Davenport, Iowa. Respondent's only representative at negotiations was Hodges while the Union was represented by Kuchirka, who served as its chief negotiator, and members of its negotiating committee including Luther Haney, James Martin, Chester Donaldson, and David Chadwick, who were also employed by Respondent.

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[3] Respondent's unopposed motion dated April 21, 1980, to correct the transcript is hereby granted.

[4] The Union did not file a separate brief but stated that it joined in the brief filed by the General Counsel.

[5] The findings are based on the pleadings, admissions, stipulations, and undisputed evidence contained in the record which I credit.

[6] These individuals were supervisors under the Act.

[7] See *Terrell Machine Company*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970).

[8] Howard "Jim" Hodges is a consultant who performs work for Respondent and is its agent under the Act.

According to both President Schmidt and Hodges, Hodges was appointed by Schmidt prior to negotiations to serve as Respondent's negotiator with the authority to negotiate the best contract that could be achieved subject to final approval by Schmidt. The testimony of Hodges, President Schmidt, and Secretary-Treasurer Schmidt establish that throughout the course of negotiations Hodges kept them apprised of what transpired at the negotiation meetings including agreements he had reached with the Union and they discussed those matters.

Hodges[9] testified that at the June 30, 1978, negotiating meeting, which lasted about an hour, Kuchirka presented him with a proposed written contract. This proposed contract appears to be complete except for certain portions left blank. These portions were designated holiday pay; vacation; group insurance and pension program; wages and job classification with subheadings of automatic wage progression, cost-of-living, yearend bonus, attendance bonus, education program, loans, and picnics; rates of pay for appropriate labor grade with automatic progression; day work; funeral leave; general provisions; and effective dates. Kuchirka informed Hodges that those items left blank would be filled in later and explained what he thought about them and various items in the proposed contract. No proposals were given to the Union at this meeting.

Hodges informed them that Respondent's owner had died and the Company was for sale[10] or would be liquidated and it had also lost about $100,000 during the last few months of operations.[11] The 1978 unaudited loss was about $8,000.

Hodges also mentioned that July 3 would be celebrated as a holiday without pay while July 4 would be celebrated as a holiday with pay.[12]

Among other items discussed, Hodges reported that checks under Respondent's perfect attendance policy had been paid that day and he questioned the Union about whether it wanted to include as part of negotiations the case involving the discharge of employee Gordon Hyman, discussed *infra*.

Hodges reiterated Respondent's position that it would not meet during working hours or pay for negotiating time, whereupon Kuchirka informed Hodges that he would file charges against him if he did not change his position about not meeting during working hours. Although Hodges initially took the position that Respondent would only meet during nonscheduled working hours,[13] this position, objected to by Kuchirka, was subsequently abandoned.[14]

Hodges also furnished the Union, as requested, with a list of employees and their dates of hire.

The second negotiating meeting was held on July 5, 1978. Hodges' testimony establishes that he distributed what he referred to as a master list of those items to be resolved. This list included all those items contained in the Union's proposed contract to which corresponding numbers had been assigned by Hodges. Hodges then explained this was the approach he used in bargaining and said he was not ready to offer any counterproposals. However, Hodges did propose a 1-year contract while Kuchirka proposed a 3-year contract. Hodges informed them that because of the financial condition of Respondent there was a possibility that the 10-cent-an-hour cost-of-living increase due to be paid the employees on August 7 might be withheld. Hodges repeated that Respondent would not pay for the July 3 holiday.

During the meeting Hodges again mentioned the Gordon Hyman case to see whether Kuchirka wanted to include it as an issue in negotiations; however, Kuchirka refused.

This meeting only lasted about 35 minutes. It ended after Kuchirka questioned Hodges about his authority to represent Respondent and requested evidence to show it. Hodges' response was they could cancel meetings previously set at their initial meeting for July 6 and 7 until they got it resolved that he was representing Respondent.[15]

Hodges informed Kuchirka he would call him no later than July 11 about a meeting date and said he could not meet that Friday as suggested by Kuchirka.

Kuchirka also informed Hodges he was going to file charges against him for refusing to meet during working hours and over Respondent's refusal to pay for the July 3 holiday.

On July 7, 1978, the Union filed a charge with the Board in Case 33-CA-3811 against Respondent alleging a refusal to bargain. On August 14, 1978, those portions of the charge relating to Respondent's refusal to "discuss union contract proposals, to meet at reasonable times and for reasonable lengths of time, and to make counterproposals" were withdrawn. However, those portions of the charge relating to "unilateral change in working conditions and denying employees' established benefits" were not withdrawn.

On July 11, 1978, Hodges contacted Kuchirka and they agreed to meet on July 19, 1978. Hodges had suggested July 21; however, Kuchirka informed him he had an arbitration case and wanted a couple of days.

The third negotiation meeting was held on July 19, 1978, and lasted from around 9 a.m. to about 1 p.m.

[9] Hodges was the only person who attended the negotiating meetings and testified about what transpired at those meetings concerning negotiations.

[10] President Schmidt stated that, prior to purchasing Respondent, he had informed Hodges it might be sold or purchased.

[11] According to President Schmidt, Respondent lost about $300,000 in 1976, was close to breaking even or made a little money in 1977, and lost money in 1978.

[12] July 3, as discussed *infra*, had previously been announced as a paid holiday.

[13] Both President Schmidt and Hodges testified that Respondent was opposed to meeting during working hours because it needed the Union's committee members to work.

[14] The General Counsel at the hearing disclaimed Respondent's initial position of only meeting during nonscheduled working hours as being an issue.

[15] According to Hodges he had informed Kuchirka at the start of negotiations his agreements at the bargaining table would only connote tentative approval of the contract provisions.

Hodges distributed a letter from President Schmidt, dated July 18, 1978, addressed to Kuchirka reiterating its June 16, 1978, letter about Hodges being in charge of their negotiating with the Union.[16]

Hodges also showed Kuchirka a brochure about Respondent being for sale.

Kuchirka, in the presence of Hodges and the Union's committee, called President Schmidt and inquired whether Hodges was representing Respondent at the table and further told Schmidt that Hodges did not know what he was doing and was a disgrace to the company. Although James Martin, a member of the Union's committee, testified that he did not recall Kuchirka calling Hodges a disgrace, he did not deny it occurred.

President Schmidt acknowledged receiving a call from Kuchirka and confirming that Hodges was Respondent's negotiator.

Following this call to President Schmidt approximately 18 noneconomic issues were discussed. Hodges distributed copies of various proposals he had prepared using his own language or language from the Union's original proposal. Ten of these proposals were agreed to by Hodges and Kuchirka who both signed them. They included from the Union's original proposal sections 2.1[17] and 2.2 dealing with purpose and relationship; sections 3.1 and 3.2 dealing with nondiscrimination; section 8.2 dealing with leave of absence for pregnancy; section 8.3 dealing with leave of absence for military service, except for the last sentence about the rights of employees enlisting in the Peace Corps which was deleted from Respondent's proposal; section 9.2 dealing with recognition of the shop committee; section 12.10 dealing with seniority; and section 12.11 dealing with furnishing names to new employees.

The remaining three proposals agreed to set forth that the agreement was between the Company and the Union covering the unit employees, defined the term "employee," and clarified the use of "he" or "his" as used in the agreement to also mean "she" or "hers" without any distinction.

It was not established what, if any, other issues were discussed.

Hodges and Kuchirka arranged to meet again on August 4. However, the reason for the delay was not established.

The fourth negotiation meeting was held on August 4, 1978, and lasted from around 8 a.m. until 10:35 a.m. Hodges' testimony establishes that he indicated at the meeting he wanted to devote the meeting to discussing leaves of absence, grievance procedures, and seniority including job bidding. Hodges had prepared a master checklist entitled "Non-Economic Items After 7/19/78." This list contained 18 items which had been crossed off by Hodges. They included the following provisions from the Union's original proposal: section 5.7 dealing with pyramiding of overtime and/or premium rates;[18] section 8.1 dealing with defining leave of absence, the basis for it, and conditions; sections 8.4 and 8.5 dealing with leaves of absence for union business and holding union office; section 9.1 defining the term "grievance"; section 9.1A dealing with the Union's right to inspect company records for investigation of grievances; section 9.3A dealing with permission to leave jobs to present or discuss grievances; section 9.4 dealing with procedures for handling and processing grievances; section 11.1 defining seniority; and section 11.3 including subparagraphs a through f dealing with termination of seniority and employment.

Hodges first testified that it appeared they resolved these 18 items at this meeting. However, he subsequently stated that they were crossed out prior to the meeting to show what had been done and for use at the meeting and further stated he did not recall whether he signed off on any documents at this meeting.[19]

Hodges and Kuchirka set the next negotiating meeting for August 11.

The fifth negotiation meeting was held on August 11. It lasted from around 9 a.m. until 2:45 p.m.

The testimony of Hodges establishes that he provided the Union with a master list of the unresolved noneconomic items along with five written proposals. Two of these proposals, which are the same as the ones contained in the Union's original proposal, were agreed to and signed by both Kuchirka and Hodges. These proposals, which were the same as the Union's original proposals, were section 4.1, which sets out Respondent's right to manage its business and direct the work force, and section 5.7 dealing with pyramiding of overtime and/or premium rates.

The grievance procedure was also discussed and section 9.6 of the Union's original proposal dealing with notification to an employee of the reasons for suspension and discharge and the procedure to be followed was agreed to. Also agreed to under the grievance procedure were three steps of the procedure to be followed in handling and processing grievances which were proposed by Respondent instead of those steps identified in the Union's original proposal as section 9.4a, 9.4b, and 9.4d. No agreement was reached on the other provisions of the grievance procedure discussed.

Seniority was discussed and an agreement was reached on two provisions proposed by Hodges in place of those provisions proposed by the Union in its original proposal identified as sections 11.2 and 11.4. These provisions dealt with probationary employees and maintaining a seniority list. No agreement was reached on the other seniority provisions discussed.

Another proposal, submitted by Hodges dealing with job openings, layoff, and recall, which was different from article XII of the Union's original proposed contract was also discussed but no agreement was reached.

During this meeting Kuchirka questioned Hodges about whether he had ever worked with unions before and which ones he had negotiated with. Kuchirka informed Hodges that he was going to picket the classes

[16] Neither the July 16 letter nor the July 19 letter mentioned that Hodges' authority to negotiate was limited.

[17] The first number of each section refers to the article number of the Union's original proposal which are in Roman numerals.

[18] The evidence reflects this provision was agreed to in writing at the August 11 negotiation meeting.

[19] Counsel for the parties stipulated at the hearing that to the best of their knowledge no documents were signed off at the August 4 meeting.

Hodges taught and tell other unions not to have anything to do with him and to boycott him. Kuchirka also cursed Hodges, said he was no good, and told him to wait until Respondent got busy and he was going to show everybody what kind of power he had and was going to fix him. Chester Donaldson, a member of the Union's committee, testified that he did not remember Kuchirka telling Hodges he would picket his classroom but did not deny such statements occurred. According to Donaldson both Kuchirka and Hodges used profanity against each other.

Hodges further testified that Kuchirka repeated these statements at subsequent negotiation meetings and also said that, if they did not get the issues resolved, President Schmidt's reputation would be damaged and the Union would not support the charitable organizations Schmidt was on.

No date was set for the next negotiation meeting.

On August 14, 1978, Hodges stated that he called Kuchirka about arranging a meeting that week and the following week and mentioned that the noneconomic list did not look too bad and they could get into economics. However, Hodges informed Kuchirka he did not have his schedule and would call him on Wednesday. On August 16, Hodges called Kuchirka and informed him he could not meet that week as he was preparing Respondent's position. Hodges testified that he told Kuchirka there seemed to be more talk about selling out and raising onions,[20] but cautioned Kuchirka not to tell the committee because he did not want any panic at the plant because Respondent might close it down.

Hodges promised to call Kuchirka on Monday to set a date.

On August 21, Hodges called Kuchirka and they set a meeting date for August 28.

The sixth negotiation meeting was held on August 28 and lasted from around 9 a.m. until 1:25 p.m.

The testimony of Hodges establishes that during this meeting Hodges presented 10 written proposals to the Union, some of which were agreed to. Those proposals agreed to and signed by both Hodges and Kuchirka include a proposal on the payment for jury duty in place of section 8.8 in the Union's original proposal, a proposal defining a normal workweek which is the same as section 5.1A of the Union's original proposal, a proposal on the recognition clause which is the same as section 1.1 of the Union's original proposal, a proposal based on language provided by both Hodges and Kuchirka dealing with conflicts of laws, and a proposal on the grievance procedure which is the same as section 9.5 of the Union's original proposal.

A counterproposal offered by Hodges on safety to article VII of the Union's original proposal was rejected by the Union. Hodges also offered another proposal entitled article V that the payday be changed to Friday. However, Hodges acknowledged that he and Kuchirka had first agreed that payday would be on a Thursday as it presently was, but that he subsequently changed his position following the purchase of Respondent by President Schmidt and stated that he informed Kuchirka that the reason for this change was because the present payday schedule had resulted in a cash flow problem.

Another proposal offered by Hodges dealing with excessive absenteeism and poor punctuality was withdrawn by Hodges after it was objected to by Kuchirka. A counterproposal offered by Hodges on layoff to article XII of the Union's original proposal was also discussed but no agreement was reached. Further discussed was a counterproposal by Hodges on promotions. However, this counterproposal was unacceptable to Kuchirka and no agreement was reached.

No other matters were discussed or agreements reached at this meeting.

The seventh negotiation meeting was held on September 1. Although the starting time was not established, it ended around 1:35 p.m.

Various proposals presented by Hodges were discussed and agreed to at this meeting and signed by both Hodges and Kuchirka. These included a proposal defining the workday and workweek which is the same as section 5.1B of the Union's original proposal,[21] a proposal on funeral leave,[22] a proposal for double time pay on Sunday which is the same as section 5.4 in the Union's original proposal, and a proposal for double time pay on holidays which is the same as section 5.5 of the Union's original contract proposal.

A proposal by Hodges dealing with the payment of overtime pay which is the same as section 5.3a and 5.3b of the Union's original proposal but did not contain overtime for Saturday work as contained under section 5.3c of the Union's original proposal was discussed but not agreed to. Also discussed but not agreed to was a proposal by Respondent on work shifts. While this proposal contains language similar to section 5.2B of the Union's original proposal, it does not set forth the shift hours as does the Union's proposal.

A proposal by Hodges on night crew premium pay was also discussed but not agreed to. The Union's original proposal on this matter contained in section 5.6 was broader in scope.

Hodges informed them at the meeting that in view of Respondent's financial position and record they might wish to use the inability-to-pay argument and request a 5- to 8-percent overall reduction in wages and fringe benefits.[23]

Hodges also identified at the meeting what he described as those still unresolved economic areas which included agency shop, definition of workweek and hours, safety and health, arbitration versus the right to strike, job promotion, transfer, layoff process, no-strike, no-lockout, duration of contract, and superseniority.

They scheduled another negotiation meeting for September 15, 1978. According to Hodges it was not scheduled earlier because Kuchirka informed him that three members on the negotiating committee were going hunt-

[20] According to Hodges the plant is located in prime onion growing country.

[21] A section added to the end of the provision in Respondent's proposal had been stricken.

[22] The Union, in its original contract proposal, had left a blank section for funeral leave.

[23] President Schmidt stated it was his idea about reducing wages 5 to 8 percent because Respondent was losing money. However, Respondent did not because it was optimistic about the way things were working out.

ing, Kuchirka could not meet for 2 days because of an arbitration case, and Hodges was not available for 1 week.

This meeting scheduled for September 15, 1978, was subsequently rescheduled to September 18, 1978, at the request of Hodges because of a conflict arising out of his being engaged in public sector bargaining which was under a mediator's control.

Hodges testified that on September 14 he called Kuchirka and informed him that they should begin discussions on economic items at their next meeting and suggested they discuss health and accident insurance, pensions, and job classifications.

The eighth negotiation meeting was held on September 18, 1978, and lasted from around 9:30 a.m. until 3 p.m.

This meeting began with a presentation by a representative of the Blue Cross Insurance Company provided for by Kuchirka to present the program that the Union wanted except for its having a separate drug plan.

Following the presentation various economic proposals were discussed. Hodges' testimony established that he agreed to the Union's proposal on call-in pay which is contained in section 6.1 of the Union's original proposal.

Also discussed were labor classifications and job grades brought up by the Union, a pension plan, prescription glasses, hours of work, Christmas party, certain paid holidays, Respondent's merit review system, the cost-of-living program used by Respondent (herein referred to as COLA),[24] perfect attendance bonus, education program, small loans, picnics, including how they should be paid for, and the apprenticeship program.

They also discussed wages with Kuchirka stating that they would hold that subject open until they saw what Respondent did on fringe benefits.

Regarding the discussion of COLA, Kuchirka indicated he did not like Respondent's formula for it and would probably offer a counterproposal on that aspect.

The nonpayment for the July 3 holiday was discussed and Hodges also mentioned the Gordon Hyman case. Hodges further informed them that Respondent might be sold within 3 weeks or less. The next meeting was scheduled for September 25, 1978.

The ninth negotiation meeting was held on September 25, 1978, from about 10 a.m. to 12:05 p.m. Hodges testified that he informed them President Schmidt had purchased Respondent and was in the process of reviewing the entire package of negotiations.

The subject of health and accident insurance was discussed with Hodges informing them that Respondent was looking at its entire insurance program. Hodges indicated that they might be able to solve their problems on premium payments for the second and third shifts and mentioned there might be some movement on paying the employees for the July 3 holiday to show good faith toward the employees.

Other economic issues discussed included callback pay, safety prescription glasses,[25] a wage classification system, COLA, a need for a union proposal on the pension plan, weekly disability insurance, paid holidays, and vacation pay and schedule.

Tool loans were discussed and Hodges indicated that Respondent had begun movement on the Union's proposal to make interest-free loans available for employees to purchase personal tools for their job.

Wage matters were discussed but not across-the-board type wages.

The Union's proposal to shut down the plant down from December 24 to January 2 was discussed which Hodges said they would consider.

Respondent's merit review system was discussed with Hodges taking the position that they wanted to retain their present system while the Union objected to it and proposed instead some kind of automatic wage progression.

Life insurance was also discussed. Hodges acknowledged during negotiations that Kuchirka had informed him that Respondent was paying their present insurance carrier too much and gave him an insurance booklet and a proposal on insurance. Hodges gave the information to Respondent which then researched it to see if it could increase its insurance coverage for employees at the best cost for Respondent without increasing the employee cost. According to Hodges during negotiations Respondent increased its employees' insurance[26] which Hodges acknowledged probably resulted from the Union's request.

This meeting ended with an agreement that Hodges would call Kuchirka on September 29.

On September 29, 1978, Hodges testified during a telephone conversation with Kuchirka that they scheduled a definite date for a negotiation meeting to be held on October 20, 1978, with a tentative date set for October 9, 1978. The October 9 date was tentative because Hodges was scheduled to teach a weeklong seminar which had been scheduled a year previously which he did teach that week. Hodges' proposal to meet on October 16, 1978, was rejected by Kuchirka, who informed him he would be out of town that week.

The 10th negotiation meeting was held on October 20, 1978. It only lasted from around 8 a.m. to 8:30 a.m.

Hodges' testimony establishes that this meeting began by Hodges asking Kuchirka about the Union's proposal on the pension plan whereupon Kuchirka informed him that it was not available but he would let him know when it arrived.

Kuchirka mentioned he had just returned from a trip to Detroit and told Hodges that Hodges was being investigated, accused Hodges of milking Respondent[27] of money by stringing out negotiations, and said he was going to get him. Kuchirka also told Hodges that he was tired of him prolonging and stringing out negotiations for a year which Hodges denied, saying it had been his experience that the first contract could take 3 to 6 months.

[24] This program had been in effect since about 1974.

[25] Hodges at one negotiation meeting stated that he proposed having OSHA frames instead of fancy frames and prepared an agreement that Respondent would maintain glasses within reasonable limits not to exceed one pair per year.

[26] This increase in insurance coverage was not alleged to be unlawful.

[27] Chester Donaldson, a member of the committee, testified that he also thought he heard Kuchirka accuse Hodges of milking Respondent.

Hodges informed Kuchirka that his remarks were inappropriate and not conducive to creating a good bargaining relationship at the table and he was going to leave.

Hodges then gathered up his materials and as he started to leave Kuchirka asked when he was going to hear from him. Upon informing Kuchirka he would call him Monday, Kuchirka told Hodges not to bother because he would be out of the country.

According to Hodges, he had prepared certain concessions and counterproposals to present at that meeting which he subsequently made at the next meeting.

On November 3, 1978, the Union filed a charge against Respondent in Case 33-CA-3970 alleging that Respondent had violated Section 8(a)(1) and (5) of the Act by Hodges' failure and refusal to bargain in good faith by canceling a negotiating session without proper reason and by consistently refusing to meet with the Union at reasonable times for negotiations.[28]

A hearing involving the discharge of Gordon Hyman, originally scheduled for November 28, 1978, was continued on November 29 at the request of the General Counsel to January 11.

According to Hodges, where testimony was corroborated by President Schmidt, during the period from October 20, 1978, through November 27, 1978, he spent time with management preparing for the scheduled November hearing.[29]

The 11th negotiating meeting was held on November 29, 1978, and lasted from around 9 a.m. until 7:30 or 8 p.m. This was the first negotiating meeting attended by a Federal mediator who had been called in by the Union. All subsequent negotiating meetings were also attended by a Federal mediator.

The meeting began with the parties reviewing with the mediator what had transpired during negotiations and what items remained on the bargaining table. The testimony of Hodges establishes various items were discussed including vacations, half day off with pay, Christmas party, annual bonus, December 25 and January 1 holidays, attendance checks for January 2 resulting from Respondent's perfect attendance policy, payment for July 3, 1978, holiday, and the Gordon Hyman case.

Hodges, as a counterproposal, furnished the Union with a copy of a proposed classification system which incorporated ideas of both the Union and Respondent and also offered those counterproposals and concessions which he had planned to offer at the October 20 meeting. They were as follows: two paid 10-minute breaks per shift; a provision for specialized, nonstandard safety equipment; a payment of $20 by Respondent towards the cost of prescription safety glasses with OSHA frames; paid holidays for Christmas Eve Day and New Year's Eve Day; providing noninterest loans to employees to purchase work-related tools; using profits from the vending machines for picnics and the flower fund; acceptance of the Union's language on equal pay equal work; COLA with a 25-cent-per-year cap,[30] and increasing life insurance from $4,000 to $5,000 without additional cost to the employees. Hodges also proposed keeping the vacation pay system and the education program the same as they existed under Respondent's present policies.

During this meeting the Union proposed five economic items. They were Respondent's placing everyone at the top of their rate range, granting Christmas Eve Day through New Year's Day off, keeping the perfect attendance thus, keeping the yearend bonus, and keeping the Christmas party but with some modifications. The latter three programs were already in effect.

While Hodges testified that these were additional economic items the Union was requesting, the Union had previously requested, at the September 25 meeting, Christmas through New Year's Eve Day off and, under article XVII of the Union's original proposal, had listed attendance bonus and yearend bonus but without any details.

The Union's proposal about everyone being placed at the top of their rate range was that any individual employed by Respondent at the time of the agreement would go to the top of his existing labor wage rate. Hodges rejected this proposal taking the position to keep Respondent's present system.

On December 1, 1978, Hodges testified that at a meeting held among himself, President Schmidt, Secretary-Treasurer Schmidt, and General Manager Zeaske a decision was made to pay the employees holiday pay for July 3, 1978.

The next negotiation meeting was not held until February 7. Hodges' explanation for the delay during which there was no direct oral communication between Kuchirka and Hodges was that the Federal mediator had informed him that Kuchirka because of his vacation would not meet in December 1978 when Hodges wanted to meet and during January to early February a meeting could not be arranged because of the unavailability of the Federal mediator from January 2 to January 12, a paralyzing snowstorm from January 13 through January 20, and Hodges' other prior commitments during part of that period.

Kuchirka sent Hodges a letter dated January 8 requesting a negotiating meeting and suggesting that they did not have to have a Federal mediator present. Hodges responded by letter dated January 10 informing Kuchirka that he thought it was in their mutual best interest to continue with a mediator present and indicated that the mediator would contact him about setting up the meeting.

Robert Johnston, who is the Union's director of Region 4, wrote President Schmidt a letter dated February 1 requesting that regular meetings be held in order that an agreement be consummated and suggested that Kuchirka be contacted and meetings set up for finalizing an agreement. Both President Schmidt and Hodges acknowledged that they did not respond to this letter.

The 12th negotiating meeting was held on February 7. It lasted from around 11 a.m. until 6 p.m. Hodges, with-

[28] While President Schmidt contended the unfair labor practice charges filed by the Union hurt the continuity of bargaining, he was unable to specify how it did so but presumed it did by making it difficult to keep a person's mind on the issues at the bargaining table.

[29] It was not established that this was the reason no negotiating meetings were held.

[30] Respondent's existing COLA program did not contain a cap.

out objection by the Union, also had secretarial help present at this and all subsequent negotiating meetings who made a transcript of those portions of the negotiations at which the representatives of both Respondent and Union were present and engaged in negotiations.[31]

The transcript of this meeting reflects it opened with the mediator suggesting that they review where they were to see what they had agreed on and what was still open. Kuchirka listed as follows the various items of the Union's original proposal which had been agreed on: Section 1.1 dealing with recognition and representation; sections 2.1 and 2.2 dealing with purpose and relationship; sections 3.1 and 3.2 dealing with nondiscrimination; the first paragraph of section 4.1 dealing with functions of management; sections 5.1A, 5.1B, 5.3a and b, 5.4, 5.5, and 5.7 dealing with hours of work and overtime; sections 6.1 and 6.3 dealing with reporting and call-in pay; the third paragraph of section 7.2 dealing with safety, health, and sanitation; section 8.1 except that the 45-day period was changed to 1 year; sections 8.2 and 8.3 with the exception of the last sentence about the Peace Corps which they had agreed to scratch; sections 8.4, 8.5,[32] 8.6, 8.7, and 8.8 all dealing with leaves of absence; sections 9.1, 9.1A, 9.2, 9.3A, 9.4, steps 1a, 2b, and 3c, except for the last sentence and step 4; sections 9.5 and 9.6 dealing with the grievance procedure; sections 11.1, 11.3a, b, c, d, e, and f, and section 11.4[33] dealing with seniority with the seniority lists to be furnished in January, April, July, and September; sections 12.8a, 12.10, and 12.11 dealing with job openings, transfers, layoff, and recall; the equal pay for equal work provision; and article XVIII dealing with funeral leave.

Among those sections mentioned by Kuchirka as having already been agreed to, the record does not establish when the following sections were actually agreed to: sections 5.3a and b dealing with overtime; section 6.3 dealing with reporting and call-in pay: the third paragraph of section 7.2 about maintaining glasses; sections 8.1, 8.6, 8.7, and 8.8 all dealing with leaves of absence; and section 12.8a dealing with layoffs.

Among those sections listed by Kuchirka as having been agreed on, the following sections were crossed off Hodges' July 19, 1978, master checklist: sections 8.4 and 8.5; sections 9.1, 9.1A, 9.3A, 9.4; and sections 1 and 3a.

Hodges then proceeded to list the unresolved issues. The economic ones were as follows: agency shop; definition of workweek and hours; safety and health committee language; arbitration versus strike lockout as the last step; job promotion transfer language; layoff language, language on no-strike, and language on no-lockout; duration of contract; and no-contract, no-strike priority. The unresolved economic issues listed by Hodges covered 44 items including overtime, shift differential, call-back pay, safety equipment, grievance pay and scheduling grievances, holiday and vacation pay, insurance, pension, dues checkoff, wages, COLA, lockers, picnics, classifications, present benefits, apprenticeship program, merit review system, length of contract, prescription drug and dental plan, safety glasses, and weekly disability increases.

Hodges again indicated there was a possibility that during negotiations he might make an inability to pay argument on behalf of Respondent but said if he did he was aware he would have to open Respondent's books.[34]

Following a brief discussion about safety glasses the parties then met separately with the mediator.

Later that day they met again. The transcript reflects Kuchirka brought up the matter that Jim Martin, who is a member of the committee, had been denied 2 days' perfect attendance pay because of his attending negotiations which Hodges promised to look into and subsequently did. This issue is discussed, *infra.*

The transcript also reflects that the mediator informed Hodges the Union would drop its proposal on section 1.2 dealing with union security if authorized by state law[35] and the second paragraph of section 4.1 dealing with functions of management; would agree to what Respondent already had on breaks; and would also agree under section 6.2, dealing with paying the employees called in to work outside their regular working hours, to reduce their required hours from 4 hours to 3 hours.

Other items discussed included proposals on safety glasses, section 5.2A dealing with shift hours, section 7.2 dealing with safety equipment, attendance and Christmas bonuses, COLA, noninterest loans for tools, and lockers and tools.

This meeting ended with the parties agreeing to meet on February 9 at 9 a.m. Hodges promised to give the Union its position then on each of the issues remaining on the bargaining table.

The 13th negotiating meeting was held on February 9. It lasted from around 9 a.m. until 4 p.m.

Hodges testified that at this meeting he presented various written proposals which he prepared using either his own language or language from the Union's original proposal. Those proposals agreed to between Hodges and Kuchirka, who both signed them, were as follows: a proposal for noninterest loans to purchase tools, section 5.2A dealing with shift hours with the exception that the hours in the Union's proposal of 7 a.m. to 3:30 p.m. and 3:30 p.m. to 12 midnight would be changed to from 6 a.m. to 2:30 p.m. and 2:30 p.m. to 11 p.m., a proposal that Respondent would pay $31 towards purchasing prescription safety glasses, a proposal on lunch period and paid break and washup periods in place of section 5.2B of the Union's original proposal, section 6.2 regarding call-in pay except for reducing the 4 hours in the Union's original proposal to 3 hours as offered by the Union in the prior meeting, a proposal that Respondent would provide nonstandard safety equipment in place of section 7.2 of the Union's original proposal, and a proposal that Respondent would provide an education incentive allowance.

Hodges stated that the Union presented 8 to 10 new proposals which are as follows: purpose of job classifica-

[31] The General Counsel at the hearing disclaimed the presence of secretaries at the negotiating meetings as being an issue.

[32] Hodges disagreed with Kuchirka's claim that they had agreed on sec. 8.5 whereupon a question mark was placed after it.

[33] According to Hodges they agreed to sec. 11.4 at this meeting.

[34] According to Hodges he had discussed this with President Schmidt and Secretary-Treasurer Schmidt on February 5.

[35] Iowa is a right-to-work State.

tion, absenteeism by reason of death in the family, vacation pay preamble, union bulletin board, union business as time spent, nonmember performing bargaining unit work, good-faith attitude, and furnishing the Union with pertinent information.

The transcript of the meeting reflects that various issues were discussed during the meeting. These included COLA on which Respondent wanted a cap;[36] a yearend bonus considered by Respondent to be a gift with the Union ojecting to the amount of $50[37] offered by Respondent; perfect attendance bonus; educational program; profits from the vending machines which the Union wanted used for such things as picnics and parties; toolboxes and lockers which were to be provided for by Respondent; job promotions which Respondent wanted based on skill and ability rather than seniority; seniority, safety, and health language; overtime; and union business during worktime. However, no other agreements were reached at this meeting.

This meeting ended with the parties agreeing to meet again on February 16 at 9 a.m.

The 14th negotiating meeting was held on February 16 and lasted from around 9:50 a.m. to 11:05 a.m.

Hodges' testimony establishes that he provided the Union with an updated wage schedule dated February 5.

Certain written proposals were also provided by Hodges. These proposals, which both Hodges and Kuchirka agreed to and signed, were as follows: a proposal providing that, in the event an apprenticeship program was established, Respondent would provide noninterest loans to cover the cost of tools, books, slide rules, and related items; a proposal for providing lockers and security of toolboxes; a proposal setting forth the purpose of the contract which was a recent proposal by the Union; a proposal for Respondent to provide union bulletin boards which was a recent proposal by the Union; a proposal on absenteeism because of death in the family which was a recent union proposal; a proposal requiring negotiation of new job title and classification to labor grade which was a recent union proposal; and a proposal for Respondent to furnish grievance information to the Union which was also a recent union proposal.[38]

The transcript of the meeting reflects other issues were also discussed. The yearend bonus was brought up and Kuchirka mentioned that, if it were tax free, they were openminded to the suggestion. The Union's recent proposal on nonmembers performing bargaining unit work was rejected by Hodges who gave financial reasons therefor and pointed out that managers or supervisors did bargaining work and this provision would not allow them to do it.

Hodges also testified that at this meeting Kuchirka criticized him about not talking to President Schmidt who did not know what was going on and accused Hodges of milking Schmidt out of his money by prolonging the negotiations.

Following the February 16 negotiation meeting Hodges and President Schmidt had a meeting that day with the Federal mediator at which time they discussed the negotiations.

The 15th negotiating meeting was held on February 19. It began sometime that morning and lasted until around 1 p.m., although the parties themselves only met together from 11:50 a.m. until 1 p.m.

Hodges testified at this meeting that he furnished the Union with a written document. This document, which is signed by Hodges, mentions the importance of Respondent making every concession it can when it is about to make a final offer and lists the following additional concessions Respondent was making: purpose of job classification, overtime allocation,[39] annual picnic profits from vending machine, and Saturday as such.

According to Hodges, when the Union first presented its proposal on job classification and distribution of overtime, he informed them that he could not live with the language. However, Kuchirka subsequently modified some of their language which was more acceptable.

The document also described Respondent's recent economic history as including consecutive losses, outstanding bank loans for operating capital requiring repayment, and a pessimistic business outlook for 1979 and concluded that for economic reasons, although it specifically denied an inability to pay, to maintain the status quo rather than making changes. It proposed a 1-year contract only, to maintain the present members manual as it was except for the overall loan policy and Christmas party, and to incorporate into the manual all economic items and language conceded by Respondent during negotiations.

This document specified the following items had not been changed during negotiations and would continue to be maintained as they were then in the manual: shift differential; vacations; group insurance; wages; COLA formula; 35-cent cap; yearend bonus; attendance bonus; classification structure; holidays plus the additions during negotiations; merit review system; health and safety language; and job promotion, transfer, and layoff language.

The document further specified it wanted to make clear that Respondent had not conceded to the Union's request on the following items: pay for handling grievances, scheduling and payment of meetings during working hours, pension program, dues checkoff, automatic wage progressions,[40] providing safety shoes, prescription drug plan, dental plan, prescription glasses for family, increase in weekly disability, preferential no arbitration clause, union business as time spent, and nonmember performing bargaining work.

Hodges at the hearing testified that this "document which he denied was a final offer, was to indicate where they were at and where they were going in negotia-

[36] Hodges stated it had been made clear to him by President Schmidt that he had to have a cap on COLA. President Schmidt testified the cap on COLA was proposed because of the accelerating cost of living and, as a result of the change of ownership, Respondent no longer had a big bank behind it and was more conscious of total cost.

[37] Under the members manual the minimum amount of the bonuses was $25.

[38] This latter proposal also contains another provision regarding pay for time spent on grievances which Hodges denied he had agreed to and the transcript on that meeting supports his denial.

[39] Hodges presented a proposal at the meeting on equitable distribution of overtime.

[40] President Schmidt testified that the Union's proposal on this issue was not defined specifically so there was no position to take.

tions." However, the transcript of the meeting, which shows the document was discussed in detail, reflects that Hodges referred to it as a final proposal and indicated with the changes the manual would become the contract. Hodges also informed them that those items he enumerated should cover the items which were still open at the conclusion of their last meeting.

Hodges testified, and the transcript of the meeting reflects, that Kuchirka questioned him about how much notice he needed if the employees wanted to strike. Kuchirka raised this question after remarking that there had been no final movement and that was Hodges' final answer.

The transcript of the meeting further reflects that Hodges, pursuant to Kuchirka's inquiry, agreed to furnish the Union a week later with a complete package including those things they had agreed to.

They arranged to meet again on Tuesday at 8:30 a.m. Following this meeting Hodges testified that, pursuant to Kuchirka's request, he prepared a document containing the date February 26 which he proposed to Respondent that it sign as a collective-bargaining agreement.

According to Hodges the language contained in the document, which was never given to or shown to the Union, was taken from proposals which he and Kuchirka had agreed to and signed in negotiations, was taken from provisions from the member's manual, and was taken from proposals which he stated Kuchirka had given him which he did not like but could live with. The only examples of the latter source Hodges could identify pertained to a provision on overtime and section 11.4 of the Union's original proposal under which Hodges proposed giving the Union six copies of the seniority list rather than four copies of only changes on the list which he stated they had agreed to.

Hodges presented this document to President Schmidt and Secretary-Treasurer Schmidt for their approval. However, instead of approving the document they provided Hodges with written modifications dated March 5 and a proposed contract which they testified they were willing to sign. Both President Schmidt and Secretary-Treasurer Schmidt acknowledged that they were aware their proposed contract was contrary to agreements which had been reached at the bargaining table.

While Hodges testified that he expressed certain disagreements with Respondent's proposal, Secretary-Treasurer Schmidt claimed they were all in agreement.

The Union was provided with a copy of Respondent's proposed contract which Secretary-Treasurer Schmidt stated occurred on or about March 6. This proposed agreement contained provisions taken from the members manual and some but not all of the agreements reached at the bargaining table.

The 16th negotiation meeting was held on March 22 and the bargaining portion between the parties themselves lasted from around 10 a.m. to 1:20 p.m.

The transcript of this meeting reflects as follows: Hodges furnished the Union with a copy of Respondent's insurance program as requested and a list of unresolved issues. Hodges advised that it would be extremely difficult to get dues checkoff not because of cost but because of principle.[41] Hodges suggested if they could draft something on overtime distribution Respondent would give it consideration.

Hodges mentioned he had informed Respondent that if the Union would concede on every one of those issues they had a contract but indicated he had no movement.

Kuchirka remarked Hodges had given him a proposal at their last meeting which Hodges no longer had and questioned whether Hodges was Respondent's spokesman and had the authority to agree to anything. Hodges confirmed he was the spokesman and reminded Kuchirka he had previously informed him the final package was subject to Respondent's approval and his authority was contingent on Respondent's agreeing to it also.

Kuchirka then questioned Hodges about things which they had agreed to that were not included in Respondent's final proposal. Hodges listed these items as including the equal opportunity clause, size of committee, hours of work, purpose of classification, overtime distribution, length of leave for union business, section 1d, seniority list, layoff provision, Respondent's maintaining safety glasses, Friday payday, and union business during working hours. Hodges also mentioned that the International Union had been left out by an oversight. Hodges disputed Kuchirka's claim that Respondent had agreed to a provision about pay for handling grievances.

Upon Kuchirka questioning Hodges about why proposals on job classifications and Saturday as such which he had given him on February 19 were not in Respondent's proposal, Hodges informed Kuchirka that the work he did was subject to Respondent finalizing the final document.

Kuchirka also complained about things being included in the agreement which they had not agreed to.

Kuchirka proposed, pursuant to Hodges' inquiry, that it would take the following items to get an agreement: the things they had already agreed to,[42] checkoff, everyone presently working be placed at the top of their rate range,[43] an automatic progression wage schedule which would also affect any new employee but indicated the time limits were negotiable, COLA as in the manual and with no cap, each classification to have a job description, complete set of job descriptions and classifications, letter of intent from Respondent that somewhere down the line there would be a pension system for employees, arbitration, a 1-year contract, a pregnancy clause which the law required, a letter stating that the front page of Respondent's proposed contract could not be treated as part of the contract, using the word "employees" instead of "members" in the contract, elimination of references to part-time or summer help and article XXXIV of Respondent's proposal dealing with conduct, preferential

[41] The Union's dues checkoff proposal which is contained in the original proposal would permit Respondent to deduct union membership fees and dues from the pay of employees who executed checkoff authorizations which were irrevocable for 1 year or the termination of the contract if it occurred sooner.

[42] Kuchirka advised Hodges that if they did not get all the things they had agreed to they would have to go to court.

[43] President Schmidt testified that Respondent's position on this item was it would have meant an overall 15-percent wage increase and their classification terminology was being misinterpreted.

seniority, and pay for grievances which should be resolved during working hours.

Kuchirka assured Hodges he could get such a contract approved.

Hodges then went over the items stating he would inform President Schmidt this was the Union's final position on what it would take to get a 1-year contract.

Hodges and Kuchirka then discussed a date for getting Respondent's answer to its proposal. Kuchirka mentioned he would not be available on March 27 and 28 and they agreed at Hodges' suggestion to meet at 9 a.m. on March 30.

The 17th negotiation meeting was held on March 30. It was not established how long this meeting lasted. Hodges testified that prior to the March 30 meeting he prepared a checklist which included those items which he stated he and Kuchirka had previously agreed to at the bargaining table which Respondent's officials indicated they did not want in the contract.[44] These items were equal opportunity clause, size of committee 5 to 3, hours of work language, purpose of classification, overtime distribution, length of leave for union business, justification in section 11.3d of the Union's original proposal dealing with seniority, seniority list four times per year, layoff provision use job skill instead of classification, and maintenance of safety glasses. While the list also includes Friday as payday Hodges testified he did not recall having agreed to that with Kuchirka.

There was no testimony presented regarding what transpired at this meeting. However Hodges wrote Kuchirka a letter dated April 1 stating that it was confirming Respondent's position during the March 30 meeting and that Respondent conceded the following issues: seniority list four times a year, supply the Union with a copy of each job description, letter of intent on pension program, 1-year contract; language that conforms to the new law on pregnancy, president's letter will not be part of the contract, the word "employee" used instead of "member," and union business should be resolved during normal work hours.

The 18th negotiating meeting was held on April 10 and it appears the parties themselves met from around 3:20 p.m. to 4:55 p.m.

Jim Wright, a union officer, also attended this meeting.

The transcript of the meeting reflects there was a discussion of the status of negotiations by Wright and Hodges with Hodges assuring them that Respondent was kept informed of what occurred at the meetings which was one of the reasons for having minutes taken of them.

Kuchirka brought up the list of the Union's demands made on March 22 which they went over. Kuchirka informed Hodges he was not going to ask for any increases in wages or fringe benefits on the basis President Schmidt had just bought the place and could not afford it.

Hodges denied he was "crying" inability to pay but stated that it was not in the best interest to pay fringe benefits at that time.

Kuchirka mentioned there was a Federal law on pregnancy and he did not have to bargain for that.

Kuchirka indicated that if they had to strike they would ask for a wage increase and fringe benefits but said they were willing to settle for a 1-year contract just to keep the peace.

Upon Kuchirka's inquiring of Hodges whether he had anything to offer on the Union's March 22 list, Hodges' response was that he had furnished Kuchirka with a list of those issues still on the bargaining table.

Hodges then listed the following items which he stated they had agreed on but which Respondent on seeing his completed document would not go along with: equal opportunity clause, size of union committee with the Union wanting 5 members and Respondent 3; hours of work language; purpose of classification language, overtime distribution; length of leave for union business; the word "justification" in section 11.3d; layoff provision with Respondent wanting to use job skill rather than job classification; maintaining safety glasses; and Friday payday.

Kuchirka mentioned there were other items which Hodges had not mentioned and were not in Respondent's proposed contract but which they had agreed to as well as certain things in Respondent's proposed contract they had not agreed to. The latter group included a sentence under article IV about Respondent having the right to increase rates and benefits when possible and/or needed; omitting under step 4 of section 5.3 dealing with grievances and their agreement about meetings being held at a mutual time selected by the parties which Hodges then said was not a problem; inclusion of step 5 in section 5.3 dealing with the right to strike and lockout; objection to section 6.3 dealing with departments having different work hours and posting them; objection to section 6.8 providing for a Friday payday on the grounds that payday had always been on a Thursday and they had previously signed an agreement to that effect; objection to not including under section 16.3 legitimate union business as an allowable exception to perfect attendance and punctuality; the inclusion of provisions under section 16.4 dealing with discipline for excessive absenteeism or punctuality because it came under separate rules; objection to the second paragraph of section 17.1 dealing with leave of absence because they had agreed to 3 months' leave of absence to be renewed in 30 days; the inclusion of a sentence under section 17.4 limiting the length of leave on the grounds the Union had not agreed to it; objection to word changes made in section 18.3 and objection to section 18.4's not providing for submitting complete seniority lists as they had agreed upon rather than only changes; the failure to include as they had agreed on February 16 new job classifications; toolboxes and lockers; objection to inclusion of the safety rule provisions which Kuchirka wanted taken out of the proposed contract; and inclusion of article XXXIV dealing with conduct, article XXXV dealing with part-time members, and article XXXVI dealing with summer members which Kuchirka wanted out.

Kuchirka also mentioned nothing had changed on insurance and he was not asking for the pregnancy law because the law required it.

Hodges informed them he would back off of the article on contract termination.

[44] The checklist also listed other items which, according to Hodges, were still on the bargaining table.

Hodges then listed those items which he stated were still on the bargaining table. They were dues checkoff, the proposal to move all present employees to the top of their rate range, an automatic time-wage progression schedule, the Union's desire for a COLA program as now with no cap, arbitration as the last step of the negotiations, no part-time or summer help in the contract, Union's dislike of the list of rules in the contract, preferential seniority, and compensate committee for union business and time spent during working hours.

Kuchirka asked Hodges about signing a contract and informed Hodges that if he consented to all those items the Union would sign for 1 year.

There was some discussion of a strike with Wright informing Hodges he was not threatening him with a strike.

Kuchirka also told Hodges the next meeting would be their last and Wright stated they were through talking.

Hodges sent Kuchirka a letter dated April 26 informing him that the final draft of the contract was being typed. The letter further stated that its purpose was to indicate those items they had discussed in negotiations which were not in the contract. It listed the following as items which Hodges and Kuchirka had agreed on but which Respondent would not concede to be in the agreement: equal opportunity clause, hours of work language, length of leave for union business, justification in Section 11.3d, layoff provision—used job "skill"—not "class," and Friday as payday.

The letter also listed as not being in Respondent's proposed contract the following items which Hodges testified were those the Union wanted: dues checkoff, proposal to move all employees to the top of the range, automatic time-wage progression schedule, proposal to accept COLA as now in manual—no cap (35 cents),[45] arbitration as last step of grievance procedure, no part-time or summer help in the contract, Union's dislike of list of rules of conduct, preferential seniority, and compensation awarded to committee which attends to union business during working hours.

Respondent posted a notice to its employees dated April 27 announcing that it had granted, in pertinent part, a cost-of-living increase under its COLA program and that the program had meant a 40-cent-per-hour increase for the past year.[46]

Hodges stated that, about the beginning of May, a proposed contract which Respondent was willing to sign was sent to Kuchirka.[47] The Union received it about May 2 or 3 but no negotiation meeting was held at this time.

This proposed contract, with certain limited exceptions, was essentially the same as the proposed contract previously submitted to the Union by Respondent. These exceptions include the absence of President Schmidt's cover letter, changing the word "member" to "employees" in certain articles, increasing under section 5.2 the number of members of the shop committee it would recognize from up to three members to up to five members, and under Section 23.4 adding a sentence that Respondent would maintain the prescription safety glasses from the standpoint of normal wear and tear during working hours.

On May 10, the Union filed its charge against Respondent in the instant case, Case 33-CA-4272.

On May 14, the Union went on strike and the striking employees did not report to work. The strike was still continuing at the time the hearing closed.

Luther Haney, a member of the Union's negotiating committee, credibly testified, without denial, that, at a union meeting held on April 29 by Kuchirka and members of the Union's negotiating committee, Kuchirka reviewed with the employees attending what had transpired at negotiations, went over Respondent's proposed contract, pointed out the differences in said contract, and accused Respondent of not negotiating in good faith. Haney reiterated what Kuchirka told them and following a request by the negotiating committee for a strike vote the employees voted to strike as the committee had recommended.

On May 5, another union meeting was held to set a date for the strike. Following a discussion of the status of negotiations, the employees voted to strike on May 14.

Two members of the Union's negotiating committee, James Martin and Chester Donaldson, corroborated Haney's testimony that the membership voted at a union meeting to go on strike.

On June 1 a petition for issuance of a temporary injunction was filed in the District Court in the State of Iowa by Respondent relating to the picketing at its plant and that same day an order granting a temporary injunction was issued limiting the number of pickets and prohibiting certain types of conduct.

Kuchirka sent Hodges a letter dated July 9 in which he advised Hodges that Union was ready and available to resume bargaining and suggested meeting dates of July 16, 18, and/or 20 or if they were not suitable for Hodges to furnish the Union with acceptable dates.

According to Hodges this was his first contact with the Union since the strike began although he had talked with the Federal mediator.[48] President Schmidt testified that Respondent did not initiate any negotiation meetings itself because the atmosphere was not good, they had a lot of difficulty with people on the picket line and had their hands full trying to run the plant. According to him in late June or early July the Federal mediator had made several requests concerning Kuchirka's wanting to meet Respondent whereupon he instructed Hodges to meet whenever he could and denied knowing of any reasons Hodges could not meet with the Union.

The 19th negotiation meeting was held on July 20. Although the meeting started around 9:30 a.m., it was not established how long it lasted. The transcript of the meeting establishes that Hodges presented the Union

[45] The 35 cents was the amount of the cap on COLA which Respondent proposed.

[46] The General Counsel represented at the hearing that such evidence was offered solely to show the 35-cent cap which Respondent proposed on its COLA program would have been lower than the 40 cents they would receive under the existing program.

[47] Both Secretary-Treasurer Schmidt, who testified he prepared it on April 29, and President Schmidt testified they were willing to sign it.

[48] Luther Haney, a member of the Union's negotiating committee, acknowledged that Kuchirka to his knowledge had not requested a meeting before.

with a checklist of the unresolved items which is the same as those contained in Hodges' April 26 letter to Kuchirka and indicated he had nothing to add to this list.

Kuchirka accused Hodges of not bargaining in good faith because Hodges was the spokesman and Respondent had not agreed to the things he and Hodges had agreed to at the bargaining table. Hodges denied he had not been bargaining in good faith.

Kuchirka stated that they were asking for more money and had to have the people at the top of the wage classification rate.

Hodges, pursuant to Kuchirka's inquiry, assured Kuchirka that Schmidt was willing to agree to everything they had previously agreed to with the exception of those items contained in section I of the checklist prepared by Hodges.[49] Kuchirka mentioned they had previously agreed to Thursday as payday, which was payday, whereupon Hodges acknowledged they had been paying on Thursday but mentioned there was a cash flow problem which the former owner did not have and this was an economic item and the reason for having Friday.[50]

Pursuant to Kuchirka's inquiry whether Hodges was willing to offer anything other than what he had offered at the last meeting, Hodges informed Kuchirka that the only area in which he definitely had movement was the cap on COLA. While stating they still wanted a cap on COLA because they were concerned about double digit inflation and building it into something they could not control, Hodges proposed raising the cap to 50 cents an hour while maintaining the present COLA program. Hodges also informed them that this was the only change that Respondent had agreed to.

Upon Kuchirka asking Hodges if Respondent were willing to offer across-the-board on wages, Hodges' response was he did not discuss it with Respondent because it was a new demand.

When Kuchirka mentioned Hodges was offering less than they presently received, Hodges responded that he had a right to do this whereupon Kuchirka accused him of not bargaining in good faith by offering less than the people presently received.

They also discussed vacation pay for the strikers.

Kuchirka then presented the Union's demands regarding a contract. These included the Union's language on article V, dealing with hours of work and overtime; article VI, dealing with reporting and call-in pay; article VII, dealing with safety, health, and sanitation; a new proposal on showers for all employees and cleanup on company time; article VIII, dealing with absence; article IX, dealing with the grievance procedure; article X, dealing with arbitration which Hodges, pursuant to Kuchirka's inquiry, rejected at that time; article XI, dealing with seniority, article XII, dealing with job openings, transfer, recalls, and layoff; article XIII, dealing with holiday pay, article XIV, dealing with vacation; group insurance; a pension plan; uniform wages for job classifications; job descriptions for all classifications; funeral leave which Hodges stated he thought they had; article XIX which provides protection for all benefits; equal pay for equal work; cost-of-living protection; skilled training; apprenticeship training program; present COLA without cap on it as it was in the manual; a $1-an-hour pay increase for all employees across the top of the rate now shown by Respondent; keeping of the yearend bonus; perfect attendance as in the manual modified to have it for personal days off and 2 days for every 3 months on system; and 3-year contract. Kuchirka represented this was a complete list of the Union's demands but cautioned it could grow or decrease depending on negotiations.

Hodges and Kuchirka then agreed to meet at 9:30 a.m. on July 27. Kuchirka also suggested they meet every day upon resuming negotiations.

The 20th negotiation meeting was held on July 27 and lasted from around 9 a.m. to 11:55 a.m. The transcript of the meeting reflects Hodges pointed out that unlike other negotiating situations he must constantly check with President Schmidt to see where they wanted to go. Hodges also questioned Kuchirka about why the Union had added certain items to its demands.

When Kuchirka accused Hodges of giving them less than the employees already had, Hodges' response was that the employees had been granted two new paid holidays, increased life insurance, an increase in the the amount the employees were reimbursed for safety glasses, Saturdays off, and a new pregnancy leave because of the law.

Hodges and Kuchirka then discussed the Union's demands at the last meeting and compared them to those contained in Respondent's proposed contract. Hodges informed them Respondent would not agree to a safety and health committee although the Union offered to reduce the number of representatives on the committee. Under the grievance procedure Hodges proposed that the final step for resolving grievances should be the right of the membership to strike and Respondent's right to lock them out.[51] However, the Union which wanted arbitration rejected it. Section 5.5 of Respondent's proposal which prohibited merit evaluations from being the subject of grievances was discussed. The Union objected to it and Hodges agreed to concede to the Union's position. Hodges explained under the grievance procedure, which was objected to by the Union, the grievance committee or party above the first step would punch out and not be paid for handling grievances. Hodges stated that, under article XI dealing with seniority, Respondent had "a hangup" about the word "justification" in section 11.3d, while the Union contended it had previously been agreed to. Hodges explained that, under section 18.5 of Respondent's proposal dealing with seniority, he wanted sufficient language that skill weighed highly in layoff, promotion, and so forth. Article XII of the Union's origi-

[49] These items were the equal opportunity clause, hours of work language, length of leave for union business, justification of section 11.3d, layoff provision—use "skill"—not "class," and proposal to make Friday payday rather than the current payday of Thursday.

[50] Secretary-Treasurer Schmidt testified Respondent wanted payday to be on Friday rather than Thursday as it presently is because it was no longer convenient for them to obtain money and this would allow the use of their money for an additional day.

[51] President Schmidt testified his position on arbitration, which did not change during negotiations, was that he opposed it as a matter of principle because Respondent was a small company and could not subject itself to a third-party decision.

nal proposal dealing with job openings, transfer, layoff, and recall was discussed and rejected by Hodges who indicated pursuant to Kuchirka's request he would offer a counterproposal. Group insurance and pension plans were discussed with Hodges' mentioning that Respondent had increased the employees' life insurance at no cost to them. Kuchirka requested Hodges to furnish him with the cost of Respondent's benefits which Hodges said he would take to Respondent. On dues checkoff Hodges proposed that on a given date they would allow the committee or a member during nonworking time to set up a table where people could pay dues and have a committee submit them to the Union. Hodges further explained President Schmidt had indicated if withholding money for the United Givers Fund and savings bonds was inconsistent[52] he would stop withholding it, but Schmidt was not going to deduct money from people's checks and submit it to the Union.[53] Wage and job classifications were brought up with Hodges promising to furnish the Union with the existing job descriptions they had at the next meeting. Funeral leave was accepted by the Union. Kuchirka mentioned that the $1-an hour wage increase he proposed, which Hodges rejected, was negotiable. Hodges' reason for rejecting the automatic wage provision was because they would stay with the merit review system. Other items discussed included holiday pay, vacations and vacation pay, length of the contract, absenteeism, apprenticeship program, education, and the placement of employees at the top of their job classification. They then agreed to meet at 9:30 a.m. on August 3. Kuchirka had proposed meeting Monday and every day afterwards if necessary while Hodges offered to meet Friday, stating he could not meet Monday.

The 21st negotiating meeting, which was the last one, was held on August 3. It started around 9:45 a.m. and ended around 10:05 a.m. for the parties to caucus with the Federal mediator.

Hodges testified he prepared a checklist of those unresolved issues. This checklist listed the following items on which they had agreed to during negotiations but which Respondent had refused to accept: equal opportunity, hours of work language—issues of compulsory overtime and loss of attendance pay, length of time allotted for union business, use of the word "justification" in section 11.3d, layoff provision—use of word job "skill" instead of "class," and Friday as payday.

The transcript of the meeting reflects that at the meeting Hodges agreed to the provisions on equal opportunity, use of the word "justification" in section 11.3d which the Union wanted, and that he indicated there was no problem with the provision about the length of time for union business, stating he did not know why he had been listing it and it was off the list.

The checklist also listed as follows the issues that had not been resolved in negotiations, dues checkoff, movement of all employees to the top of their range, automatic time wage progression schedule, acceptance of COLA as now in the manual—no cap (50 cents), arbitration as last step of grievance procedure, no part-time—no summer help in the contract, dislike of list of rules of conduct, preferential seniority, and payment for union business during working time.

Hodges also informed them Respondent would delete the list of rules of conduct from its proposed contract and instead furnish copies to new hires or post it.

The checklist also listed the following as additional items raised by the Union since the strike: agency shop; hours of work; overtime; safety-health committee; showers for all employees; job transfer, promotion, bidding, recall, and holiday pay (Christmas shutdown); vacation pay for those on strike;[54] job descriptions; union vacation plan; group insurance; pension plan; job classification system; protection of all benefits; skill trades and apprentice training program; a $1-per-hour raise above top of the rate; reinstatement of two discharged people; year-end bonus; two paid days off for every 3 months' work; and length of contract.

Hodges testified instead of his original proposal about no arbitration he proposed inaugurating another step in the grievance procedure called the factfinding process whereby Respondent and the Union would each pay half the cost and would have an independent factfinder to make an investigation, determination, and recommendation on the issues which would not be binding. The transcript of the meeting reflects this was rejected by the Union which wanted arbitration.

The transcript of the meeting reflects Hodges informed Kuchirka Respondent had not been able to find the job descriptions which he said were old but had no objection to the Union having them if located and suggested drawing up a new set and giving one to the Union.

The length of the contract was discussed with Kuchirka seeking 3 years and Respondent 1 year.[55]

During the meeting money was also discussed with the Union asking for movement; however, no offer was made by Respondent on this issue.

The meeting ended with Kuchirka asking Hodges for the package he had asked him for and Hodges responded by saying they might as well caucus with the mediator.

No further negotiation meetings have been held by the parties and no collective-bargaining agreement was ever reached among them.

President Schmidt testified during negotiations Respondent made calculations and prepared estimates about what it would cost Respondent concerning certain pro-

[52] Union Negotiator Luther Haney testified during the negotiations the Union at one point took the position that if Respondent could check off for savings bonds and the United Givers Fund it could check off for union dues which the Union wanted, but the Union had also indicated to Respondent they could cancel those other type checkoffs if they would not check off for union dues.

[53] President Schmidt stated he was opposed to mandatory dues checkoff because of principle since the employees were not able to get out at will and his position did not change during negotiations. According to Secretary-Treasurer Schmidt, the deductions made by Respondent for savings bonds and United Way were voluntary and could be dropped at any time.

[54] The transcript of the July 20 meeting reflects Kuchirka took the position this was not a bargaining issue.

[55] President Schmidt testified that Respondent's position throughout negotiations was for a 1-year contract because of the unfavorable conditions in the proposed contract and Hodges also stated he had recommended to Schmidt prior to negotiation meetings that the first contract be a 1-year contract.

posed benefits discussed during negotiations. They estimated that for two new holidays, increased life insurance, a new prescription safety glasses allowance, Saturday overtime, COLA, and the new pregnancy benefit it would cost approximately $138,470. Estimates were also made for the cost of moving the employees to the top of their classifications and paying people to conduct union business. However, none of these documents were ever shown to the Union.

C. *Unlawful Threats*

Luther Haney, a member of the Union's negotiating committee, testified that on Friday, May 11, his foreman, Hill,[56] came to his work station and mentioned that he, Hill, had been in a meeting, the Company had heard a rumor that the employees were going on strike Monday, and that Haney should pool everyone in the shop and find out if they were going on strike on Monday, May 14. Hill had a list of all the employees' names and asked him if he were going on strike. On replying he probably would because he was on the negotiating committee and a union member, Hill said he was told to tell him if he did go on strike all of his benefits, such as his pay and insurance, would be canceled and Respondent would assume he did not want his job anymore. I credit Haney's undenied testimony and find that on May 11 Foreman Hill threatened Haney that if he engaged in a strike Respondent would assume he no longer wanted his job.

Haney further stated a few minutes later General Manager Zeaske came over to his work station and in his presence asked Foreman Hill if he had told all of his employees. After Hill informed Zeaske he had, Zeaske asked Haney if he were going on strike with the rest of the employees. On replying he was, Zeaske asked him if he knew all of his insurance and benefits would be canceled and said his card would be pulled and they would assume he did not want his job anymore.

Glenn Logsdon, Jr., another employee, also testified that, on May 11, General Manager Zeaske told him if there were a strike on Monday, all benefits would cease and Respondent would assume he no longer wanted his job.

Zeaske acknowledged talking separately to both Haney and Logsdon[57] on Friday, May 11, but denied telling them they Respondent consider them to have quit if they went on strike. According to Zeaske he only informed Haney and Logsdon that Respondent had heard a rumor of a strike and said they all had a right to strike and a right to work and that the plant would be open Monday.[58]

I credit the testimony of both Haney and Glenn Logsdon, Jr., rather than Zeaske whom I discredit and find on May 11 General Manager Zeaske threatened Haney and Logsdon that if they engaged in a strike Respondent would assume they no longer wanted their jobs. Apart from my observations of the witnesses in discrediting Zeaske, his threats were consistent with those made by other supervisors.

Two other employees credibly testified, without denial, that Work Superintendent Joe Eisenberg[59] made similar statements to them on May 11. James Martin, a member of the Union's negotiating committee, testified Eisenberg told employee Ray Lagrange and himself if they did not come to work on Monday because of the strike Respondent would consider them to have quit and all of their benefits at that time would stop including their insurance. Donna Logsdon[60] stated Eisenberg informed her and lead person Evelyn Long if they went on strike they would lose all their benefits, their vacation paychecks, their insurance, and Eisenberg would assume they did not want to work there anymore.[61]

D. *The Unlawful Refusal To Pay Striking Employees Vacation Benefits*

The employees of Respondent receive vacation pay. This policy as spelled out in its members manual provides their vacation checks will be issued before July 4 and are payable to everyone on the payroll as of July 1.[62]

Respondent's practice is to issue vacation paychecks each year before July 4 for everyone on the payroll on July 1. Those employees who are not actually working on July 1 but are on disability or medical leave also receive their vacation pay unless Respondent determines at that time they will not be returning to work.

Those striking employees who returned to work by July 1 received their vacation pay while those striking employees who did not return to work by July 1 did not receive their vacation pay.

Secretary-Treasurer Schmidt testified the vacation pay was paid to the employees on June 28 or 29.[63] His reasons as stated at the hearing for not paying it to the striking employees who had not returned to work on July 1 were because they had voluntarily absented themselves from work and Respondent did not know if and when they were returning to work. However, under cross-examination Schmidt acknowledged he had not contacted any of the strikers about whether they were going to return to work and denied receiving any information they were not going to return to work. His explanation for paying vacation pay to the strikers who had returned to work by July 1 was because they were on the payroll on July 1.

Secretary-Treasurer Schmidt testified vacation pay is determined on July 1 by the amount of tenure between July 1 and the employee's starting date, coupled with his pay rate. He acknowledged if an employee was off work

[56] Hill did not testify.

[57] Zeaske testified another employee, Ray Volk, was present and, while he believed Glenn Logsdon, Sr., was also present, Glenn Logsdon, Sr., denied it although he stated Zeaske talked to him that day.

[58] Zeaske stated President Schmidt had informed the foremen in a meeting held that day to inform the employees of this and that Schmidt had also said that anyone who went on strike would have all their company benefits canceled. President Schmidt acknowledged holding such a meeting.

[59] Eisenberg did not testify.

[60] Prior to her marriage to Glenn Logsdon, Jr., on September 28, her last name was Mulvania.

[61] These statements by Eisenberg were offered by the General Counsel solely for background evidence.

[62] No exceptions are listed in the manual.

[63] No striking employees returned to work between June 28 and July 1.

for sickness he would receive full vacation pay without a reduction for the time off work.

Secretary-Treasurer Schmidt stated the reason the vacation policy is administered this way is to keep good people working.

E. *Additional Background Evidence*

The General Counsel, for purposes of background evidence only, proffered evidence concerning an unlawful no-solicitation rule; the denial of holiday pay for July 3, 1978; the failure to pay perfect attendance pay to Union Negotiator James Martin; and the discriminatory discharge of Gordon Hyman.[64]

The following no-solicitation rule was contained in Respondent's members manual:

> Solicitation is considered a nuisance. Activities such as this are prohibited during working hours and on company premises. Members are not allowed to solicit other members. Outside solicitors are not permitted. Unauthorized bulletin board postings are not permitted.

This rule was rescinded on January 11.

The employees were informed by a posted written notice dated April 6, 1978, and signed by President Schmidt that both July 3 and 4 would be paid holidays.

However, a subsequent written notice dated June 28, 1978, posted by Respondent announcing that the shop would be closed July 3 and 4, 1978, only stated July 4 would be a paid holiday.

The Union, which had been certified on May 22, 1978, as the bargaining representative of Respondent's unit employees was not consulted in advance about the change.

Hodges acknowledged informing the Union at the first negotiation meeting held on June 30, 1978, and at subsequent negotiation meetings that July 3 would not be celebrated as a holiday with pay to which the Union objected.

While the employees were paid holiday pay for July 4, 1978, that same week they were not paid holiday pay for July 3, 1978, until December 1978 at which time as discussed, *supra*, the decision was made to pay them which was after the Union had filed its charge in Case 33-CA-3811 on July 7, 1978.

Respondent has a program which provides pay to those employees having perfect attendance and punctuality during a calendar quarter. This program, as set forth in its members manual, provides as follows:

> Members with perfect attendance and punctuality during a calendar quarter will be rewarded with 2-8 hour days' pay. New members who qualify will receive an adjusted pay.
>
> The pay may be collected when earned. The pay (up to 8 days) may be collected at a later date. 2 personal days off with pay may be taken in the following quarter. These days may be taken off without pay if the pay has been previously collected.

The allowable exceptions to this perfect attendance and punctuality pay as set forth in the manual are as follows: funeral leave, jury duty, Railroad train blocking front access to the plant, severe weather, two personal days off earned the previous quarter, and workmen's compensation case.[65]

Negotiating time was admittedly not an allowable exception by Respondent to this policy.

James Martin, a member of the Union's negotiating committee, testified that, during the second quarter of 1978 which was from April 1 through June 30, he had perfect attendance at work except for those occasions he missed work because of negotiations. About 2 days after the perfect attendance pay was due he asked Personnel Director Anderson[66] about getting his perfect attendance pay. She informed him he was not getting it because he was not on the job even though he told her the reason was because he had been in negotiations. Martin also denied receiving perfect attendance pay for the quarter July 1 through September 30, 1978, although the only time he missed work then was because of negotiations.

Martin's claim regarding loss of perfect attendance pay was first raised at the February 7 negotiating meeting.

Under cross-examination Martin acknowledged when negotiating meetings only lasted a half day he would take the rest of those days off work.

Gordon Hyman was employed by Respondent as a tool grinder from May 1977 until his discharge on February 24, 1978.

His union activities included attending union meetings, soliciting employees to sign union authorization cards, signing a union authorization card himself, serving as chairman of the in-plant organizing committee, and distributing union literature at the plant.

Hyman testified that on February 17, 1978, Work Superintendent Eisenberg accused him of violating the no-solicitation rule by soliciting on company premises and warned him he was walking on very thin lines and there was a possibility of losing his job for soliciting on company premises. Eisenberg also defined company time to include from the time he rang in in the morning until he rang out in the evening to go home.

Hyman stated that on or about February 20, 1978, while passing out union literature to other employees his foreman, Alex Rosha, and Work Superintendent Eisenberg questioned them about what they were doing and asked if they were going to sign authorization cards.

On February 22, 1978, Hyman testified Personnel Director Anderson questioned him about why he wanted him to help the Union organize, informed him the Company could not afford a union, and asked him whether he realized he was walking on very thin lines by his violations of the members manual.

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[64] On January 11, a settlement agreement in Cases 33-CA-3605 and 33-CA-3811 which involved the no-solicitation rule, discharge of Gordon Hyman, and nonpayment of holiday pay for July 3, 1978, was approved and following compliance with its terms the consolidated complaint in those cases was dismissed.

[65] Secretary-Treasurer Schmidt testified the reason for the policy is to keep good people working.

[66] Anderson did not testify.

Neither Rosha, who resigned from Respondent in December 1978, Anderson, nor Eisenberg testified, and I credit Hyman's undisputed testimony regarding these incidents.

On the morning of February 24, 1978, Hyman, accompanied by two other employees Chuck Walker and Doug Wilson,[67] went to the office to discuss with Secretary-Treasurer Schmidt an improperly sharpened drill bit. Hyman credibly testified, without denial, he had gotten permission from his foreman, Rosha, and permission from Foreman Hill,[68] who was the supervisor of Chuck Walker and Doug Wilson to talk to Schmidt.

During the conversation with Secretary-Treasurer Schmidt at which Hodges was present, Hyman testified both Schmidt and Hodges talked rapidly and he could not understand everything they said. However he stated Hodges, whom he had never met before, identified himself as a lawyer with the company and the United States Government. Hodges also told him to pick his words carefully and that Hyman knew he was walking on very thin lines as to his violation of the no-solicitation on company time and premises. Upon asking Hodges whether he was charging him with violating company time or premises, Hodges replied on company time. Schmidt also told him to pick his words very carefully and said he was walking on very thin lines. Hodges asked them did they not realize the Company would go broke if the Union came in and said it had been a nonprofit company for the past 3 years. Hodges and Schmidt again mentioned to Hyman he was walking on thin lines for this violation and said he was going to be losing his job if he continued breaking the no-solicitation rule.

Hyman stated he raised his hands and told them he would rather drop the whole thing then because he honestly felt he was not capable of competing against a lawyer and repeated his statement. Hodges responded by using profanity and told Hyman to get out of there and get back to work and said he had already violated one rule in the members manual and for him not to make the situation worse and get himself fired.

Secretary-Treasurer Schmidt denied there was any discussion of the Union or the no-solicitation rule during the conversation. According to him the only things Hodges said was he was an attorney and, at the end of the conversation using profanity, told Hyman to get back to work. Although Hodges testified he did not testify about this meeting, I credit the testimony of Hyman rather than Secretary-Treasurer Schmidt. Besides my observations of the witnesses the threats made to Hyman on that occasion were consistent with prior threats made by other supervisory personnel to Hyman and in view of the failure of Hodges who testified on other matters to corroborate Schmidt's testimony.

Secretary-Treasurer Schmidt stated shortly after this meeting ended Foreman Rosha came to the office inquiring about the whereabouts of Hyman, Walker, and Wilson, whereupon he informed Rosha they had been in a meeting with him. Upon asking Rosha whether Hyman had asked his permission about going to the meeting Rosha denied it. According to Schmidt, he instructed Hyman to check with his foreman before coming up to see him.

Schmidt stated he then conferred with Foreman Rosha, Work Superintendent Eisenberg, Hodges, and President Schmidt and he, himself, made the decision to discharge Hyman.

Hyman credibly testified that that afternoon Foreman Rosha called him to the office where Work Superintendent Eisenberg was present. They gave him his check and Rosha told him there was no more use for his working there or something to that effect. Upon asking Eisenberg the reason Eisenberg informed him they could not make him happy there anymore which Eisenberg denied. When Rosha started telling him he had heen spending too much time with fellow employees, Eisenberg interrupted and, using profanity, informed Eisenberg they did not have to tell him anything because he had his paycheck and all he had to do was leave. Hyman left.

According to Hyman on February 17, 1978, Secretary-Treasurer Schmidt had informed him pursuant to his inquiry that with Foreman Rosha's report and his work record and performance he saw no reason why Hyman should not be getting his raise. Although Schmidt denied making such statements he acknowledged that in January 1978, he informed Hyman his record had been good and he was confident he could do the work.

F. *Analysis and Conclusions*

The General Counsel contends Respondent violated Section 8(a)(1), (3), and (5) of the Act as alleged by unlawfully threatening employees for engaging in a strike, refused to pay certain striking employees their vacation benefits, and refused to bargain in good faith with the Union and that the strike was an unfair labor practice strike. Respondent denies having violated the Act or that the strike was an unfair labor practice strike.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act. Section 8(a)(3) of the Act provides in pertinent part: "It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ." Section 8(a)(5) of the Act prohibits an employer from refusing to bargain collectively with the representatives of its employees.

The background evidence proffered by the General Counsel clearly establishes union animus on the part of Respondent.[69]

The no-solicitation rule, which was in effect until January 11, prohibits solicitation during working hours which was defined by Work Superintendent Eisenberg in enforcing the rule against Gordon Hyman to mean from the time an employee rings in in the morning until that

[67] Neither Walker nor Wilson testified.

[68] Neither Rosha nor Hill testified.

[69] Although the General Counsel in his brief alleges that unlawful polling of employees was conducted, this was not alleged in the amended complaints and was not included among those matters he defined at the hearing. Accordingly, this issue was not fully litigated and no finding will be made.

employee rings out in the evening to go home. Such no-solicitation rules infringe upon the rights of employees to solicit on their own time and are unlawful. *Essex International, Inc.*, 211 NLRB 749, 750 (1974). Accordingly, Respondent's no-solicitation rule which was maintained and enforced was unlawful. Gordon Hyman's discharge occurred shortly after he had been threatened with discharge by Work Superintendent Eisenberg, Personnel Director Anderson, Hodges, and Secretary-Treasurer Schmidt for having violated this unlawful no-solicitation rule. Secretary-Treasurer Schmidt's contention that Hyman was discharged for not getting Foreman Rosha's permission as instructed to meet with him the day he was discharged was refuted by the undisputed and credible evidence Hyman had obtained such permission and by Foreman Rosha informing Hyman upon discharging him that the reason was because they could not make him happy there. Under these circumstances, including the enforcement of the no-solicitation rule against Hyman, the threats to discharge Hyman for violating the rule, the timing of his discharge in relation to such threats and having rejected Respondent's defense, I am persuaded and find Hyman was discharged on February 24, 1978, for violating the unlawful no-solicitation rule and therefore his discharge was unlawful under the Act.

Respondent by eliminating July 3 as a paid holiday after it had previously been announced to the unit employees without first notifying or bargaining with the Union which had since been certified as the collective-bargaining representative of the unit employees unilaterally changed the unit employees' wages and working conditions and thereby violated the Act. The law is well settled that unilateral changes in terms and conditions of employment without bargaining with the union representing such employees violates Section 8(a)(5) of the Act. *Amsterdam Printing and Litho Corp.*, 223 NLRB 370, 372 (1976); and *N.L.R.B.* v. *Benne Katz, etc., d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962).

Insofar as the refusal to pay James Martin his perfect attendance pay is concerned I do not find the evidence sufficient to prove it was because he missed work solely for the purpose of attending negotiations. The only negotiation meeting held in the second quarter of 1978 was on June 30, 1978, and that meeting only lasted an hour and occurred outside work hours. During the third quarter of 1978 a number of the negotiation meetings only lasted about a half a day and Martin by his own admission would not work the remainder of those days without any showing it was related to bargaining or that he had permission to be off work the remainder of those particular days. Under these circumstances I do not find the principle set forth in *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 388 U.S. 26 (1967), applicable.

The findings, *supra*, with respect to the threats to employees about striking and denying certain strikers their vacation pay, establish on May 11 Foreman Hill threatened Luther Haney that if he engaged in a strike Respondent would assume he no longer wanted his job and General Manager Zeaske threatened Luther Haney and Glenn Logsdon, Jr., that if they engaged in a strike Respondent would assume the employees no longer wanted their jobs.

The test applied in determining whether a violation of Section 8(a)(1) of the Act has occurred is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of the employee rights under the Act." *Electrical Fittings Corporation, a Subsidiary of I-T-E Imperial Corporation*, 216 NLRB 1076 (1975).

The fact employees may elect to go on strike cannot be equated to their quitting their jobs. Therefore, applying the above test, I find Respondent, by engaging in such conduct enumerated, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act and has thereby violated Section 8(a)(1) of the Act.

Respondent refused to pay those striking employees who had not returned to work on July 1 their vacation pay.

While Respondent contends the reason for such action was because the members manual required they had to be on the payroll on July 1, such reason is contrary to its practice of permitting those employees on disability and medical leave on July 1 to receive their vacation pay unless Respondent determines they will not be returning to work. Here there was no evidence any of the striking employees who were denied their vacation pay had informed Respondent they would not be returning to work. Rather, Respondent, as herein found, had unlawfully threatened employees if they went on strike it would assume the employees no longer wanted their jobs and employees had also been informed if they went on strike all of their benefits would cease. Based on such evidence, including the unlawful threats, Respondent's union animus established by its unlawful conduct herein found and having rejected Respondent's defense, I am persuaded and find the reason Respondent refused to pay the striking employees who had not returned to work on July 1 their vacation pay was because of their participation in the union strike and Respondent thereby violated Section 8(a)(3) and (1) of the Act.

The next issue to be resolved is whether Respondent refused to bargain in good faith with the Union.

Section 8(d) of the Act defines the duty to bargain collectively as "the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement . . . ."

This obligation does not compel either party to agree to a proposal or to make a concession. *N.L.R.B.* v. *American National Insurance Co.*, 343 U.S. 395, 404 (1952).

The essential element in the bargaining principle is the serious intent of the parties to reach a common ground. *Romo Paper Products Corp.*, 220 NLRB 519 (1975).

A determination of whether a respondent has met the good-faith bargaining standard requires consideration of the totality of respondent's conduct. *M. R. & R. Trucking Company*, 178 NLRB 167 (1969), enfd. in part 434 F.2d 689 (5th Cir. 1970); and *N.L.R.B.* v. *Insurance Agents' International Union, AFL-CIO* [*Prudential Insurance Company of America*], 361 U.S. 477, 498 (1960).

The evidence, *supra*, establishes that 21 negotiating meetings were held over a period of approximately 13 months without a contract being reached.

During the 18 negotiating meetings held prior to the May 14 strike, the Union and Hodges, who served as the sole negotiator for Respondent throughout negotiations, agreed to various contract proposals which were subsequently rescinded[70] by Respondent's officials without any valid explanation being given to the Union. This action occurred notwithstanding the fact that the Union had been assured repeatedly by Respondent's President Schmidt, without any limitations, that Hodges was its authorized negotiator and Hodges throughout negotiations had kept Respondent's officials apprised of what transpired at negotiations without their having taken any action to disavow such proposals when they were entered into.

Although an employer is not required to be represented by an individual possessing final authority to enter into an agreement, this is subject to a limitation that it does not act to inhibit the progress of negotiations. *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1780 (Office and Professional Employees Union, Local No. 445, AFL-CIO)*, 244 NLRB 277 (1979). The degree of authority possessed by the negotiator is a factor which may be considered in determining good-faith bargaining. *Lloyd A. Fry Roofing Co.* v. *N.L.R.B.*, 216 F.2d 273, 275 (9th Cir. 1954).

Here Respondent by allowing its sole negotiator to agree to contract proposals over a prolonged period of the negotiations of which it was aware at the time and then later rescind them under the circumstances presented here only served to disrupt and impede the bargaining process. Therefore, I find that Respondent by failing to vest its sole negotiator with sufficient authority to conduct negotiations and by rescinding contract proposals previously agreed to engaged in bad-faith bargaining.

Respondent denied the Union's proposal on dues checkoff and its position remained adamant throughout negotiations. The only reason Hodges gave the Union for such denial was that it was a matter of principle and President Schmidt was not going to deduct money from people's checks and submit it to the Union. Schmidt, who acknowledged his position on dues checkoff remained unchanged throughout negotiations, claimed he was opposed to it on principle because employees were not able to "get out at will." However, while under the Union's proposal, authorizations were irrevocable for 1 year or on the termination of the contract if sooner and dues would only be deducted for those employees who voluntarily signed such authorizations. Since dues checkoff could only be authorized voluntarily and Respondent maintained payroll deductions from employees' pay for savings bonds and the United Givers Fund where they had authorized such deductions, I am not persuaded by Schmidt's reasoning for refusing to allow dues deductions.

[70] Included among these items were the equal opportunity clause, the use of the word "justification" in section 11.3d, the layoff provision, the payday schedule, and hours of work language. Although the first three items were subsequently agreed to again by Hodges at the August 3 negotiation meeting, the other items never were.

To have a fixed intent not to reach an agreement on dues checkoff is unlawful. *Hospitality Motor Inn, Inc.*, 249 NLRB 1036 (1980). Based on the foregoing evidence, when considered in light of the other unlawful conduct herein found, I find Respondent had a predetermined intention which existed throughout negotiations not to reach an agreement with the Union on dues checkoff which demonstrates bad-faith bargaining. However, I do not find the refusal to agree to the dues checkoff provision itself constitutes bad-faith bargaining.

The Union in its original proposal proposed binding arbitration to resolve these grievances which could not be settled through the grievance procedure. Its position on this issue remained unchanged throughout negotiations. Respondent rejected this proposal and proposed instead that the final step of the grievance procedure would be the right of the membership to strike and Respondent's right to lock them out. Upon the Union's rejection of this proposal Hodges offered another proposal, which the Union likewise rejected, that a factfinding step be included in the grievance procedure whereby each party would pay half the cost for an independent factfinder to make an investigation, determination, and recommendation on the issues but which would not be binding.

President Schmidt who acknowledged his position remained unchanged throughout negotiations on this issue claimed he objected to arbitration as a matter of principle because Respondent was a small company and could not subject itself to a third-party decision.

Since the evidence establishes arbitration was discussed, counterproposals were offered, and agreement was reached on various provisions of the grievance procedure, I do not find that Respondent's refusal to agree to arbitration as a final step of the grievance procedure itself constitutes bad-faith bargaining as alleged.

Only 21 negotiation meetings were held during the period June 30, 1978, through August 3 and the length of those meetings varied. The dates for holding the June 30, August 4 and 11, and September 25, 1978, and February 9 and 16, 1979, meetings were agreed on by the parties without any earlier meeting dates being requested. It was not established how the July 5, 1978, February 19, March 22, and April 10 meeting dates were selected. The July 19, 1978, meeting date was selected after both Hodges and Kuchirka were unable to meet on the dates suggested by each other. The August 28, 1978, meeting date was agreed on by the parties after Hodges requested a week to prepare the Respondent's position. The delay for the September 18, 1978, meeting date was at the request of the Union for its negotiation committee members to go hunting, 2 days for Kuchirka to attend an arbitration case, and a request by Hodges for 8 days which included 3 days for public sector bargaining under a mediator. The October 20, 1978, meeting date was selected because Hodges needed a week to teach a previously scheduled seminar and Kuchirka planned to be out of town for a week. The November 29, 1978, meeting date was arranged after Kuchirka had informed Hodges he would be out of the country. The delay in scheduling the February 7 meeting was due to the Federal mediator in-

forming Hodges that Kuchirka could not meet in December 1978 because of his vacation and because in January and early February either the Federal mediator, who had been called in by the Union and preferred by Hodges to be present, was unavailable, weather conditions involving a paralyzing snowstorm, or prior commitments by Hodges. The March 30 meeting date was selected after Kuchirka indicated he would not be available 2 days. The July 20 meeting date suggested by Kuchirka was the first request by the Union for a meeting after the strike began. The July 27 meeting date was the earliest date Hodges could meet and Kuchirka requested they begin meeting every day at their next meeting. The August 3 meeting date was agreed to after Hodges was unable to meet on the Monday requested by Hodges.

Such evidence establishes the delays in scheduling negotiating meetings were attributable to the unavailability of both Hodges and the Union's negotiators without any showing their requests for the delays were for the purpose of delaying bargaining. For these reasons and absent as here any evidence showing the Union pushed for more frequent meetings throughout the course of negotiations, except for the last two meetings, I am persuaded and find there is insufficient evidence to establish Respondent engaged in unwarranted and unreasonably delays in the scheduling and holding of bargaining meetings as alleged. Insofar as the lengths of such meetings are concerned there was no showing of any demands being made to extend the lengths of such meetings on these occasions.

The evidence, *supra*, establishes the Union presented Respondent with a complete contract proposal, except for certain economic demands, at the first negotiation meeting and up until the time of the strike supplemented it with various proposals including a 3-year contract; insurance plan; plant shutdown from December 24 to January 2; automatic wage progression; placing employees at the top of their rate range; keeping Respondent's perfect attendance bonus and yearend bonus; keeping Respondent's Christmas party with some modifications; job classification, absenteeism by reason of death in family; vacation pay preamble; union business as time spent; nonmembers performing unit work; good-faith attitude; furnishing the Union pertinent information; profits from vending machines to be used for picnics and parties; COLA as it was in the members manual without a cap, job descriptions for each classification; complete set of job descriptions and classifications; pension system, arbitration; pregnancy clause required by law; letter stating the front page of Respondent's proposed contract, which was a letter from President Schmidt, and could not be treated as part of the contract; use of word "employee" instead of "member"; elimination of reference to part time or summer help in Respondent's proposed contract; elimination of the article dealing with conduct in Respondent's proposed contract; preferential seniority; and pay for grievances which should be resolved during work hours.

Respondent during this same period agreed to various union proposals including purpose and relationship, nondiscrimination, leave of absence for pregnancy and military service, recognition of shop committee, certain seniority provisions, furnishing names to new employees, pyramiding of overtime and/or premium rates, defining leave of absence, leave of absence for union business and holding office, defining grievances, Union's right to inspect records for investigating grievances, permission to leave job to discuss grievances, certain provisions of the grievance procedure defining seniority, termination of seniority and employment, Respondent's right to manage the business and direct the work force; notification regarding reasons for suspension and discharge and the procedure, recognition, defining workday and workweek, double time pay on Sunday and for holidays, call-in pay; purpose of contract, providing union bulletin board, absenteeism because of death in the family, negotiation of new job title and classification to labor grade, and furnishing grievance information to the Union.

Respondent's own proposals agreed to by the Union during this period included who the agreement was between; defining the term "employee"; clarifying the use of "he" to include "she"; certain steps of the grievance procedure, certain seniority provisions dealing with probationary employees, and maintaining a seniority list; a proposal on job openings, layoff, and recall; jury duty; conflicts of law; funeral leave; noninterest loans to purchase work related tools; shift hours; paying $31 towards the purchase of prescription safety glasses; lunch periods and breaks and washup periods; providing specialized nonstandard safety equipment; providing education incentive allowance; providing non-interest loans for such things as tools if an apprenticeship program is esablished; providing lockers; and security of toolboxes.

Other proposals offered by Respondent during this period were on a 1-year contract, safety, Friday payday, excessive absenteeism and poor punctuality, layoff, promotions, overtime pay, work shifts, night crew premium pay, classification system, $50 yearend bonus, and maintaining the members manual except for the overall loan policy and Christmas party and incorporating those economic items and language conceded in negotiations.

Concessions offered by Respondent during this same period included two paid holidays; use of vending machine profits for picnics and flower fund, acceptance of the Union's language on equal pay equal work, COLA with a 35-cent cap increased life insurance from $4,000 to $5,000 without additional cost to the employees; keep the vacation pay system and the education program intact; purpose of job classification; overtime allocation; Saturday as such; furnishing seniority list four times a year; supplying the Union with job descriptions; letter of intent on pension program; language to conform to pregnancy law, President Schmidt's cover letter not to be part of contract; one word "employees" instead of "members"; union business should be resolved during normal work hours, and increase size of shop committee up to five members.

Some of those provisions agreed to by Respondent were reached as noted previously.

The Union proposed as concessions to drop its proposal on union security and part of the proposal on functions of management, to accept a 1-year contract, and to not ask for any increase in wages or fringe benefits.

Upon my considering both these items agreed to as well as those proposed, I find that such evidence establishes that prior to the strike notwithstanding the Union offered substantial concessions by offering to agree to a 1-year contract without any increases in wages or fringe benefits Respondent offered only minimal noneconomic and economic concessions and those concessions were more than offset by its proposing a cap, which had not previously existed, on its existing COLA program. Rather, Respondent's proposal for a contract was, with limited exceptions, particularly on substantive matters, essentially the same as the wages, hours, and working conditions contained in the members manual.

For example, the economic increases offered were limited to such benefits as two additional paid holidays; increasing the minimum yearend bonus from $25 to $50, raising the allowance for prescription safety glasses to $31, increasing the insurance coverage, paying time and one-half for Saturday work, funding certain educational expenses, and providing noninterest bearing loans for purchasing tools and equipment.

Further, subsequent to the strike while Respondent agreed to some but not all of those proposals it had previously rescinded, it limited its own proposals to raising the proposed cap on COLA to 50 cents, deleting the rules of conduct from its proposed contract, allowing merit evaluations to be the subject of grievances, furnishing existing job descriptions, and setting up a table at the plant for a union committeeman to collect union dues.

Based on the foregoing evidence I find that Respondent offered only minimal concessions to the Union on both noneconomic and economic demands under circumstances further evidencing bad-faith bargaining on the part of Respondent. However, I do not find that Respondent's insisting on a cap on the COLA raise due in August was evidence of Respondent's bad-faith bargaining as alleged.

The evidence also establishes that throughout negotiations Hodges made statements to the Union's negotiators about the plant being liquidated or closed possibly withholding the COLA raise due in August 1978 because of financial conditions, and possibly raising an inability-to-pay argument and requesting a 5- to 8-percent overall reduction in wages and fringes because of financial conditions without any such action occurring. While Respondent had lost money in 1976 and in 1978 no foundation crunch threats such as actually liquidating or closing the plant were established and I am persuaded that they constitute further evidence of bad-faith bargaining on Respondent's part.

The evidence also establishes that Respondent, while agreeing to certain of the Union's proposals, only submitted approximately 19 proposals of its own all on single items during the first 10 bargaining sessions and it was not until about 8 months later in March before the bulk of its own proposals which consisted primarily of those provisions contained in its members manual were submitted. I find such delay in presenting its own bargaining proposals was further evidence of Respondent's bad-faith bargaining.

Having found that Respondent as evidenced by its bad-faith bargaining failed to vest its sole negotiator with sufficient authority to conduct negotiations; rescinded contract proposals previously agreed to; possessed a predetermined intention which existed throughout negotiations not to reach an agreement with the Union on dues checkoff; offered only minimal concessions on both noneconomic and economic demands; made unfounded threats of plant liquidation or closure to the Union's negotiators; delayed in submitting its own bargaining proposals; and, additionally, engaged in concurrent unfair labor practices away from the bargaining table by maintaining and enforcing an unlawful no-solicitation rule, made unilateral changes by eliminating July 3 as a paid holiday, threatened employees with job loss if they went on strike, and refused to pay certain strikers their vacation pay, as well as its display of union animus as herein found, I find that Respondent, both before and after the strike, refused to bargain in good faith with the Union and thereby violated Section 8(a)(5) and (1) of the Act.

Respondent at the hearing raised as a defense that it was the Union which failed to bargain in good faith and therefore precludes finding a violation against Respondent. It argues in its brief that the Union refused to bargain in good faith by bargaining to an impasse on a nonmandatory subject of bargaining about excluding part-time employees from the unit, repeatedly filed frivolous unfair labor practice charges, repeatedly threatened Hodges; increased its demands particularly after the strike, insisted on sticking to its original proposal, failed to provide counterproposals, and failed to provide Respondent's package to its membership at the time of the strike vote.

An examination of the evidence pertaining to these issues refutes such a defense. There is no evidence that any impasse was ever reached during negotiations. Not only does a union have a statutory right to file charges with the Board, but there is no showing here that any of the charges filed were frivolous. Although the threats made to Hodges reflect unfavorably upon Kuchirka's conduct, they were not of such a nature as the record reflects by a continuation of the bargaining process to adversely affect negotiations. The Union's increased demands after the strike had been threatened prior to the strike should Respondent refuse, as it did, the Union's proposals for a contract and, under such circumstances, could not constitute evidence of bad faith. The Union agreed to many of Respondent's proposals as opposed to insisting upon its original proposal and offered counterproposals throughout negotiations. Lastly, there was no requirement that the Union submit Respondent's proposed contract to its membership at the time of the strike vote, especially in view of Respondent's bad-faith bargaining.

The remaining issue is whether the strike was an unfair labor practice strike. The standard applied in determining whether a strike is an unfair labor practice strike is whether it is one caused "in whole or in part" by an unfair labor practice. *Citizens National Bank of Willmar*, 245 NLRB 389 (1979).

Here the employees voted on April 29 to strike after being informed of what had transpired during negotiations and having found Respondent had engaged in bad-

faith bargaining both before and after the strike vote was taken. I find the strike was caused and prolonged by Respondent's unfair labor practices herein found and was an unfair labor practice strike.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Rockingham Machine-Lunex Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), and the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), Local 2077, are each labor organizations within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees including warehouse and shipping employees, truck drivers, janitors and leadmen employed at the Employer's Pleasant Valley, Iowa, facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Union has been and is now the exclusive representative of all the employees in the aforesaid appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By threatening employees that if they engage in a strike they would assume the employees no longer wanted their jobs, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act and has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By refusing to pay the striking employees who had not returned to work on July 1, 1979, their vacation pay because of their participation in the union strike, Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

7. By refusing to bargain in good faith with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. The strike which began on May 14, 1979, having been caused and prolonged by Respondent's unfair labor practices, is an unfair labor practice strike.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act.

Accordingly, Respondent shall be ordered to pay vacation pay to those striking employees who had not returned to work on July 1, 1979, with interest from the date vacation pay was paid to the other employees on or about June 28 or 29, 1979.

Having found that Respondent did not bargain in good faith, it shall be ordered to bargain collectively with the Union in good faith with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees and embody in a signed agreement any understanding reached.

Further, since the May 14, 1979, strike was an unfair labor practice strike, Respondent shall be ordered to reinstate those strikers upon their unconditional application for reinstatement and make whole for any loss of earnings the strikers who have made themselves available for employment on an unconditional basis but who were refused reinstatement, with interest.

Backpay and interest as herein provided for shall be computed in the manner prescribed by *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[71]

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining representative for the period provided by law, the initial period of certification shall be construed as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Glomac Plastics, Inc.*, 234 NLRB 1309 (1978), enfd. 600 F.2d 3 (2d Cir. 1979); *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; and *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

Upon the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[72]

The Respondent, Rockingham Machine-Lunex Company, Pleasant Valley, Iowa, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees that if they engage in a strike they will assume the employees no longer want their jobs.

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[71] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[72] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

(b) Refusing to pay striking employees who had not returned to work on July 1, 1979, their vacation pay because of their participation in the union strike.

(c) Refusing to bargain in good faith with the Union as the exclusive representative of all its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including warehouse and shipping employees, truck drivers, janitors and leadmen employed at the Employer's Pleasant Valley, Iowa facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), and its Local 2077, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Pay the striking employees who had not returned to work on July 1, 1979, their vacation pay with interest in the manner set forth in that portion of this Decision entitled "The Remedy."

(b) Upon request, bargain in good faith with the Union for employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed contract.

(c) Upon their unconditional application, offer strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make whole for any loss of earnings strikers who have made themselves available for employment on an unconditional basis but who were refused reinstatement with interest.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order.

(e) Post at its Pleasant Valley, Iowa, facility copies of the attached notice marked "Appendix."[73] Copies of said notice, on forms provided by the Regional Director for Region 33, shall, after being duly signed by Respondent's authorized representative, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the amended complaints be, and they hereby are, dismissed insofar as they allege unfair labor practices not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten our employees that if they engage in a strike we will assume they no longer want they jobs.

WE WILL NOT refuse to pay our striking employees who did not return to work on July 1, 1979, their vacation pay because of their participation in the Union's strike.

WE WILL NOT refuse to bargain in good faith with International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), as the exclusive representative of our employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed under Section 7 of the Act.

WE WILL pay those striking employees who did not return to work on Jul 1, 1979, their vacation pay with interest.

WE WILL, upon request, bargain in good faith with International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), as the exclusive representative of our employees in the bargaining unit described below and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees including warehouse and shipping employees, truck drivers, janitors and leadmen employed at the Employer's Pleasant Valley, Iowa facility; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon their unconditional application, offer strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make whole for any

[73] In the event that this Order is enforced by a Judgment a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

loss of earnings strikers who have made themselves available for employment on an unconditional basis but who were refused reinstatement, with interest.

ROCKINGHAM MACHINE-LUNEX COMPANY